

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1307

United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

—against—

HARVEY S. MEYERS,

Defendant-Appellant.

APPENDIX

(Volume I — Pages 1A - 324A)

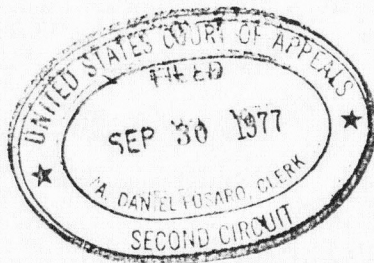
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1A

OFFENSE NO. 0208 1 0852 MEYERS, HARVEY S. Case Filed Mo. Day 04 04 77 0227 01
 MEASURE NO. DISTRICT COURT JUVENILE NO. 01
 FELONY No. X (LAST FIRST MIDDLE)

U.S. DISTRICT COURT 26:7201 OFFENSES CHARGED Income Tax Evasion ORIGINAL COUNTS 1&2
 663

U.S. MAG. CASE NO. BAIL • RELEASE
 Delivered AMT. Set. Fugitive Felt. Recog. Date Bail Not Made Status Chained (See Docket) Conditions 10% Deposit Safety Bond Considered 3rd Other

II. KEY DATES & INTERVALS
 ARREST OF U.S. Custody begun High Bail Date Information 4-4-77 ARRAIGNMENT 4-14-77 TRIAL Trial Set For 4-14-77 1st Filing 4-14-77 Trial begun 05-02-77 Trial ended 05-05-77

SENTENCE
 Disposition of Charges 06-17-77
 Convicted X On All Charges
 Acquitted On Lesser Charge
 Dismissed W.D. W.P. On Government Motion

MAGISTRATE
 SEARCHED INDEXED SERIALIZED FILED
 PRELIMINARY EXAMINATION OR REMOVAL HEARING
 WAIVED NOT WAIVED INTERVENING MOTION
 INITIAL APPEARANCE DATE P
 INITIAL NO. OUTCOME
 HELD FOR G. OR OTHER P. CEEDING IN THIS DISTRICT
 HELD FOR G. OR OTHER P. CEEDING IN THIS DISTRICT

U.S. Attorney at Large
 Thomas E. Engel
 791-1990

ATTORNEYS
 Kalman V. Gallop
 1345 Avenue of the Americas, N.Y.C. 10019

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-1447

PROCEEDINGS
 DATE DOCUMENT NO. PROCEEDINGS
 4-4-77 Filed Indictment.....Lasker, J.
 4-14-77 Deft. (atty. Wallace Musoff) pleads not guilty. R.O.R. Case assigned to Briant, J. for all purposes.....Lasker, J.
 4-25-77 Filed Govt's AFFIDAVIT of Robert J. Jossen, in support of the Govt's application for the issuance of forthwith subpoenas duces tecum.
 5-2-77 Filed Govt's REQUESTS TO CHARGE.
 5-3-77 Filed Govt's MEMORANDUM IN OPPOSITION to admission of amended tax returns.
 5-3-77 Filed Deft's MEMORANDUM OF LAW in support of the deft's position that the amended tax returns for the yrs. '71 & '72 are admissible.
 5-3-77 Filed ORDER - that no testimony or documents produces in obedience to this order may be used against MARCELINO FERNANDEZ, etc. BRIANT, J.

Con't on page # 2.

BY PROCEEDINGS (continued)

PAGE TWO

V. EXCLUDABLE DELAY

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER
5-2-77					
5-3-77					
5-4-77					
5-5-77					
5-5-77					
5-6-77					
6-3-77					
6-17-77					
6-22-77					
7-8-77					

Jury trial begun.

Trial cont'd.

Trial cont'd.

Trial cont'd & concluded. Deft. Guilty on both counts. PSI ordered. Sent. adj'd. until 6-17-77. BOR ...Brieant, J.

Filed Govt's Supplemental Request to charge.

Filed GOVT's requests to charge on behalf of deft.

Filed deft's Memorandum with Re: sentence to be imposed.

Filed Judgment & Commitment (Atty. Kalman V. Gallop Present)
 The deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of TWO (2) YEARS on each of counts 1 and 2, to run concurrently with each other. And deft. is FINED \$5,000.00 on count 1. Deft. is continued on his own recognizance pending appeal.....BRIEANT, J. Issued all copies on 6-21-77.

Filed NOTICE OF APPEAL by the deft from the Judgment filed 6-17-77 to the USCA. Mailed Notices to the Counsel for the Appellant and the US Atty.

FILED TRANSCRIPT RECORD OF PROCEEDINGS
 DTD: MAY 4TH, 1977.

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

A TRUE COPY

MAILED TO F. BURCHARDT, Clerk

By

Deputy Clerk

BEST COPY AVAILABLE

3A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U.S.C.A. NO. _____

UNITED STATES OF AMERICA

-v-

HARVEY MEYERS

CASE NO. 77 Cr 227

JUDGE Brieant

EXTRACT OF DOCKET ENTRIES

DATE

PROCEEDINGS

7-25-77

Filed transcript record of proceedings dtd: May 2,3,4,5,
June 17, 1977

A TRUE COPY

RAYMOND F. BRUGHART, Clerk

By

[Signature]
Deputy Clerk

77-1307

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
UNITED STATES OF AMERICA

v.

HARVEY S. MEYERS
-----x

United States District Court
for the Southern District of
New York

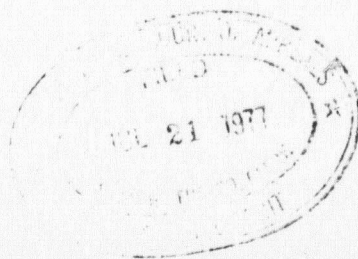
Case No. 77 Cr. 227

Judge Hon. Charles L. Brieant,
Jr.

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11-1307

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

U.S.C.A. NO. _____

-----X

UNITED STATES OF AMERICA

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF
NEW YORK

-v-

Harvey Meyers

CASE NO. 77 Cr 227

JUDGE Bricant

-----X

1st SUPPLEMENTAL RECORD

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77-1307

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA : 77 Cr. 227
-against- :
HARVEY S. MEYERS, :
Defendant. :
-----X

REQUESTS TO CHARGE ON BEHALF OF DEFENDANT,
HARVEY S. MEYERS

REQUEST NO. 1

No inference whatever is to be drawn from the fact that an Indictment was filed against the defendant. The Indictment is a mere accusation or charge and it is not to be considered as any evidence of the truth of the charges but merely as a statement of the Government's claim. The defendant in this case, as in all criminal cases, are presumed to be innocent until proved guilty beyond a reasonable doubt and that presumption of innocence stays with the defendant from the beginning to the end of the trial.

60

REQUEST NO. 2

The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a "clean slate" - with no evidence against him. And the law permits nothing but legal evidence presented before the jury to be considered in support of any charge against the accused. So the presumption of innocence alone is sufficient to acquit a defendant, unless the jurors are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration of all the evidence in the case.

A reasonable doubt is a doubt based on reason which arises from the evidence or lack of evidence. It is a doubt which a reasonable man or woman might entertain. It is not a fanciful doubt; it is not an imagined doubt; it is not a doubt that a juror might conjure up in order to avoid performing an unpleasant task or duty. Let me repeat, it is a reasonable doubt.

Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that a reasonable man or woman would be willing to rely and act upon it unhesitatingly in the most important of his or her own affairs.

While bearing in mind that it is rarely possible to prove anything to an absolute certainty, the jury will remember as well that a defendant is never to be convicted on mere suspicion or conjecture.

The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant; for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A reasonable doubt exists whenever, after careful and impartial consideration of all the evidence in the case, your mind is wavering or uncertain to the point where you have a doubt that would cause a prudent person to hesitate before acting in matters of importance to himself and herself, then you have not been convinced beyond a reasonable doubt and you must return a verdict of not guilty.

The concept of reasonable doubt is most important. Finding a citizen to be guilty of a crime is serious. You will consider the seriousness of that kind of adjudication in determining whether you have a reasonable doubt with respect to the facts in this case.

So, too, if you view the evidence in the case as reasonably permitting either of two conclusions - one of innocence, the other of guilt - you should, of course, adopt the conclusion of innocence, and acquit the defendant.

Adapted from United States v. Davis, 328 F.2d 864, 867 n.1 (2d Cir. 1964)

Also adapted from Judge Weinstein's Charge in United States v. Abelow, 65 Cr. 90 (EDNY 1/16/67)

The last paragraph adapted from United States v. Cacchillo, 416 F.2d 231 (2d Cir. 1969)

Federal Jury Practice Instructions, Mathes, Sec. 8.01, as amended

United States v. McConney, 329 F.2d 467, 469 (2d Cir. 1964)

11A

REQUEST NO. 3

If, after considering all the evidence before you against the defendant, you find the evidence reasonably permits two conclusions - one consistent with his innocence and the other consistent with guilt - you must accept the conclusion of innocence and acquit the defendant. For, then, the Government has not met its duty of proving the defendant's guilt beyond a reasonable doubt; and the presumption of innocence has not been overcome.

United States v. Armone, 363 F. 2d 385, 393
(2d Cir.), cert. denied 385 U.S. 957 (1966)

United States v. Cacchillo, 416 F.2d 231 (2d Cir.
1969)

United States v. McConney, 329 F.2d 467, 469 (2d
Cir. 1964)

REQUEST NO.4

You are not to give any greater weight or credibility to the testimony of a witness who testifies in this case solely because of the fact that he is a witness for the Government. His testimony is to be evaluated in the same manner as you would evaluate the testimony of any other witness. The mere number of witnesses and documents has no necessary relationship to the burden of proof.

The defendant in a criminal case never has the burden or duty of calling any witnesses or producing any evidence.

If you find that as to any single element of the crime charged the Government has failed to prove said element beyond a reasonable doubt, then you must find the defendant not guilty.

REQUEST NO. 5

Three essential elements are required to be proved in order to establish the offense charged in COUNTS ONE and TWO of the indictment. The Government must prove beyond a reasonable doubt each of the following:

First: The fact that a substantial additional amount of Federal Income Tax was due and owing from the accused for the calendar year 1971 and 1972 over and above the amount of the tax which was declared or disclosed in the defendant's income tax return for that calendar year;

Second: Knowledge of the accused that some additional Federal Income Tax of a substantial amount was due and owing from him to the Government for the calendar year 1971 and 1972 over and above the amount of the tax which was declared or disclosed in his income tax return for that calendar year; and

Third: The fact that the accused willfully attempted, in some manner, to evade or defeat such additional tax, with the specific intent to defraud the Government of such additional tax.

As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged; the law never imposes upon a

14A

defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

If you find that as to any single element of the crime charged the Government has failed to prove said element beyond a reasonable doubt, then you must find the defendant not guilty.

REQUEST NO. 6

An understatement of income tax is not enough. This is true even if the taxpayer knows an additional tax is due. The Government claims and must prove that there is both an understatement of taxable income and fraud upon the Internal Revenue Service. The defendant can not be convicted unless both have been proved beyond a reasonable doubt.

Spies vs. United States, 317 U.S. 492

Holland vs. United States, 348 U.S. 121

REQUEST NO. 7

With regard to each of the crimes charged in this indictment, it is necessary that the Government prove beyond a reasonable doubt that the acts were done willfully. To do an act willfully requires that the Government prove beyond a reasonable doubt that the acts or acts were done voluntarily and intentionally and with specific intent to do something the law forbids.

That is to say, with bad purpose, either to disobey or disregard the law. If there is reasonable doubt that the defendant's acts were done as a result of mistake, carelessness, ignorance, inadvertence, negligence, reliance upon another or some other noncriminal act, you must acquit him.

You must affirmatively find beyond a reasonable doubt that the defendant had the specific intent and bad or evil purpose to do something which the law forbids or requires to be done. If you find that the defendant's tax return was not correct, this fact alone is not sufficient to sustain a conviction. You must also find beyond a reasonable doubt that the defendant had a specific intent and bad purpose either to disobey or disregard the law. If you do not find beyond a reasonable doubt that the essential element of willfulness is present, you must acquit the defendant.

United States vs. Bishop, 412 U.S. 346 (1973).

17A

REQUEST NO. 8

not given
except
in 3rd
+ 4th paragraphs

Defendant's acts in connection with his income tax returns are not "willful" if they are done through inadvertence, carelessness or lack of understanding of what the law required, or as a result of his reliance upon his accountants to whom he delegated the responsibility to prepare his tax returns.

In determining whether or not the acts of the defendant, Harvey S. Meyers, were willful you should take into consideration all of the relevant circumstances including the background of the defendant, his wife's relationship with her brother, and any obligations that may have existed between them, the assistance the defendant received from his wife in the preparation of the tax returns, the services performed by the accountants and any other factors brought out at this trial which you feel are relevant to the issue of the defendant's willful conduct.

The defendant does not have to prove to you that his actions were not willful. It is the Government's burden to prove beyond a reasonable doubt that the defendant acted willfully at the time he signed his return.

An act is not knowingly and willfully committed if it is committed because of mistake, carelessness, negligence, ignorance, reliance upon another in good faith or some other noncriminal reason.

REQUEST NO. 9

There is a great distinction between civil tax liability and the criminal acts charged in this case.

The defendant herein is charged with a commission of a crime. The mere fact alone that he may or may not owe taxes does not indicate that he is guilty of a crime.

I wish to emphasize that your verdict in this case, whether it be guilty or not guilty, is not a determination of the civil tax liability of the defendant.

Stated another way, should you find the defendant not guilty, such a verdict does not imply that he is absolved from any further civil tax liability.

U.S. vs. Jack Kane; 1974, EDNY, 73 Cr. 327 (Weinstein, D.J.)

REQUEST NO. 10

Marcelino Fernandez testified of a crime of immunity.

One who testifies under a grant of immunity with a promise from the government that he will not be prosecuted is a competent witness. His testimony may be received in evidence and considered by the jury even though not corroborated or supported by other evidence.

Such testimony, however, should be examined by you with greater care than the testimony of an ordinary witness. You should consider whether the testimony may be colored in such a way as to further the witness's own interest, for a witness who realizes that he may procure his own freedom by incriminating another has a motive to falsify. After such consideration, you may give the testimony of the immunized witness such weight as you feel it deserves.

REQUEST NO. 11

Marcelino Fernandez has testified on behalf of the Government. If believed, his testimony is that of an accomplice. An accomplice does not become incompetent as a witness because of his admission that he participated in the crimes charged and it is not necessary that his testimony be corroborated by other evidence. However, you the Jury, should keep in mind that such testimony is always to be received with caution and considered with great care and independent corroboration should be sought where possible.

21A — 24A

REQUEST NO. 12

The defendant in this case did not testify in his own behalf.

As you know under our Constitution and laws no defendant in a criminal case can be compelled to be a witness against himself; and that means that in a criminal case a defendant has the prerogative and the privilege not to testify, and the fact that he does not testify does not in any way, directly or indirectly, permit you to draw any inference adverse to the defendant. A defendant has the right to rely on his presumption of innocence and to put the Government to its proof.

The Government's Burden of Proof to prove the defendant guilty beyond a reasonable doubt and the presumption of innocence afforded to every defendant, is in no way affected by his failure to take the stand.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

HARVEY S. MEYERS,

Defendant.

:

: Before:

: HON. CHARLES L. BRIEANT

: District Judge

: and a Jury.

:

:

:

:

:

77 Cr. 227

New York, May 2, 3, 4, 5, June 17, 1977

STENOGRAPHER'S MINUTES

JPjw

75A

1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

HARVEY S. MEYERS,

Defendant.

77 Cr. 227
(CLB)

May 2, 1977
10:30 A.M.

B E F O R E :

HON. CHARLES L. BRIEANT,

District Judge.

A P P E A R A N C E S :

ROBERT B. FISKE, JR., ESQ.,
United States Attorney for the
Southern District of New York

ROBERT J. JOSSEN, ESQ., 791-7154
Assistant United States Attorney

WAGMAN, CANNON, MUSOFF & GALLOP, ESQS.,
Attorneys for the Defendant

KALMAN V. GALLOP, ESQ., of Counsel

ALSO PRESENT:

TIMOTHY HARTNETT,
Internal Revenue Service Investigator

1 jpjw

2 (In open court)

3 MR. JOSSEN: Government ready, your
4 Honor.

5 MR. GALLOP: Defendant ready, your Honor.

6 THE COURT: Good morning. Where is the
7 defendant?

8 MR. GALLOP: Right here, your Honor.

9 THE COURT: All right. Send for the jury
10 panel.

11 Mr. Jossen, I looked at this ex parte order
12 dated April 29th. I really think it ought to be disclosed.
13 I recognize it is a borderline situation and the Court
14 is not going to tolerate any harassment of the witness
15 or any improper cross examination.

16 But the fact, the basic ultimate fact in
17 there is a matter which quite possible ought to be
18 before the jury as to Count 1.

19 MR. JOSSEN: Very well, your Honor.

20 THE COURT: I think you ought to make it
21 available.

22 MR. JOSSEN: Your Honor, I will supply a
23 copy of my communication to the Court to Mr. Gallop at
24 this time.

25 THE COURT: All right.

1 jpjw

3

2 Insofar as the voir dire requests which
3 have just been received this morning from the defendant,
4 16, 17 and 18 will not be used.

5 However, those matters can be taken up
6 in the request to charge, particularly 18, I am willing
7 to charge if so requested.

8 Similarly, 17, if you want. If there is
9 anything further I can take up at this time I am willing
10 to do so, otherwise I will await the coming of the
11 jury.

12 MR. JOSSEN: If I might, will the Court
13 inquire during the voir dire of the jury whether any
14 member of the panel has ever had his tax returns audited
15 by the Internal Revenue Service?

16 THE COURT: I have been so requested
17 by the defendant and I will do so. I don't think it is
18 disqualifying unless it causes a bias or animosity. I
19 would assume that most returns or many returns are
20 audited.

21 MR. GALLOP: I had submitted a memorandum
22 of law concerning the amended returns of the defendant.

23 THE COURT: What was the date of the filing
24 of the amended returns?

25 MR. GALLOP: September 1970.

1 jpjw

2 MR. JOSSEN: September 24, 1974.

3 THE COURT: What was the date they were
4 prepared? I assume somebody prepared them for the
5 defendant.

6 MR. GALLOP: Yes, they were prepared by
7 another accounting firm.

8 THE COURT: Perhaps you might simply state
9 the date when he ordered the other accounting firm to
10 prepare them.

11 I also would like to know the date when
12 his activities became known to the government.

13 MR. JOSSEN: Your Honor, I have a memorandum
14 of law with respect to this matter which I would like to
15 hand up to the Court at this time.

16 THE COURT: The dates are significant for
17 these purposes and I would like to know what the dates
18 are.

19 MR. JOSSEN: It contains a number of the
20 dates, your Honor, with respect to the time when the
21 matters first become known to the defendant.

22 The amended returns do not bear a preparation
23 date, your Honor. However, there is a notation on each
24 amended return that there is interest to September 15, 1974,
25 which is apparently being paid with the deficiencies.

jpjw

5

1
2 THE COURT: Is it really true that the
3 investigation was sufficiently progressed by that time
4 to let them know that he had a problem?

5 MR. JOSSEN: The government's position
6 is that it clearly was. The government's position is
7 that the problem was made known to Mr. Meyers by November
8 13, 1973, at which occasion he appeared at an audit with
9 a representative of Ernst & Ernst and an Internal Revenue
10 agent. At which point there was a discrepancy noted
11 between the total deposits in Mr. Meyers bank account
12 for 1972 and the amount which had been reported as his
13 total gross receipts on Schedule C for the same income
14 tax return year.

15 MR. GALLOP: There was a continuing audit
16 after that point in time that lasted quite a while.
17 Because Mr. Grau, the Revenue agent advised me that he
18 was going to school in Hempstead and he was new on the
19 job and there was about a two or three month adjournment
20 at this time. I think Mr. Jossen might have his report
21 to establish the dates.

22 THE COURT: Well, I think it is difficult
23 to rule on it without the dates. My initial reaction
24 is that they are of such slight relevance, it might be
25 very well to avoid any possibility of error by simply

1 jpjw

2 letting them in. They don't show much if they were
3 filed after the audit began.

4 It is sort of a case of owning up after
5 you are caught and that won't mean much to the average
6 juror. Not with this amount of money.

7 MR. JOSSEN: I am concerned as I indicated
8 in the government's memorandum, that notwithstanding the
9 very limited, if any, relevance to the fact that the amended
10 returns were filed, they may in fact cause prejudice to
11 the government to the extent that they suggest to a
12 juror or some jurors the question why the government is
13 pursuing this case since the apparent deficiency has
14 been paid by the taxpayer.

15 I submit that they are of such negligible
16 value, if any, on the questions of intent and wilfulness
17 that they should be excluded.

18 THE COURT: You see, I don't have any
19 doubt if he takes the stand he can put them in. Of course
20 he can testify that he suddenly found that his taxes had
21 been understated and it was all through the error of an
22 accountant and as soon as he found out he went to another
23 accountant and had a proper return filed. I think any
24 defendant is able to to do. Then the returns would
25 become admissible because they would be authenticated

jpjw

7

by his own testimony and they would be admissible to explain and amplify what he did.

What you want to do, Mr. Gallop, is get them in without putting him on the stand. I think that presents a different question.

Are they certified?

MR. GALLOP: I am certainly willing to accept the government's copy of them. Or I will put the accountant on the stand to put in the copies that he returned.

THE COURT: I think they are of very slight weight. We would avoid any possible appearance of error if we took them. Get the dates and then I will make a ruling.

MR. JOSSEN: Some of the dates will become apparent to the Court which I expect the Court will hear this morning.

THE COURT: The returns by themselves don't show very much and to an extent they rebut any statement that he may have made to the auditing agent that he had a non-taxable source. According to the memorandum.

Is that what they are talking about?

MR. GALLOP: I haven't read the memorandum

1 jpjw

8

2 of law which was just given to me now.

3 THE COURT: Take a moment and read it.

4 (Pause)

5 (Jury panel entered the courtroom)

6 (Jury of twelve and two alternates
7 were duly impaneled and sworn)

8 THE COURT: At this time, I would like
9 to express my thanks and appreciation to the members of
10 the panel who were not chosen. I ask you now to return
11 to Room 109.

12 Members of the jury, in just a few moment
13 we will take a brief recess. The clerk of the court
14 will show you to the jury room which is assigned to this
15 court.

16 He will also demonstrate to you how you get
17 to that jury room from the outside. I want you to
18 reassemble in that jury room after your luncheon recess
19 and to reassemble there at the appointed hour tomorrow
20 or however the case may be continued.

21 I ask you to please be on time. I will try
22 to do the same.

23 After the recess, you will hear the opening
24 statements of the attorneys. The government will make
25 an opening statement outlining its case and then the

1 jpjw

2 defendant's attorney may make an opening statement out-
3 lining his case, what he intends to prove. A defendant
4 is not required to make any opening statement because,
5 as I will explain to you in greater detail, every defendant
6 is presumed innocent.

7 The government has the burden to prove
8 beyond a reasonable doubt to your satisfaction all of the
9 essential elements of the crime charged in any particular
10 count of an indictment before he may be convicted on
11 that count. Unless all those elements are proved to
12 your satisfaction beyond a reasonable doubt, it is your
13 duty to find a verdict of not guilty as to that count.

14 Each count in the case will be decided
15 separately by you.

16 Opening statements are not evidence. It
17 is a promise or indication on the part of the attorney
18 who makes the statement of what he intends to prove and
19 it is permitted only to aid you in generally understanding
20 the nature of the case and the significance of evidence
21 when it is introduced.

22 After the opening statements, the government
23 will introduce its evidence and at the close of the
24 government's evidence the defendant has the right to
25 introduce evidence although he is not required to do so,

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2 and then rebuttal evidence may be produced.

3 At the closing of all the evidence, the
4 attorneys will make their closing arguments to you.

5 The law applying to the case will be
6 contained in the instructions I give you from time to
7 time during the trial. It is your duty to follow my
8 instructions as to the law.

9 It is your function here to decide the
10 facts and determine the facts from the evidence and the
11 reasonable inferences arising from the evidence. And
12 your decision as to the truthfulness of witnesses. The
13 jury may not speculate as to any issue in the case. You
14 decide it solely on the evidence that you find credible.

15 After the closing arguments and after my
16 formal instructions to you, you will then proceed to
17 deliberate on your verdicts. Until that time, you are
18 instructed that you may not discuss the case with each
19 other or with anyone else, including members of your
20 family when you go home at night.

21 You should not talk to the lawyers or
22 defendant or any witnesses, not even to say good morning.
23 You must not read any newspaper stories or listen to
24 any radio or television that might either talk about
25 this trial or the general subject matter of the trial.

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2 It is very important that you keep an open mind until
3 you have heard everything. By doing that, you will be
4 able to give a fair and impartial verdict which is
5 what you are here to do.

6 Now, at this time, the clerk will escort
7 you to the jury room which will be locked during the trial
8 so you can leave your coats and hats and magazines or
9 anything like that that you want to.

10 We will take a ten minute recess.

11 (Jury left the courtroom)

12 THE COURT: Mr. Jossen, how long will you
13 want for your opening?

14 MR. JOSSEN: I believe I will require
15 approximately fifteen minutes.

16 MR. GALLOP: I will be less than five
17 minutes, your Honor.

18 THE COURT: Fine. No discussion of law.
19 Let's just talk about facts in the opening.

20 Did you reach any conclusion about
21 those tax returns. Is it essential to know that before
22 the opening, if so, I will give you a ruling now.

23 MR. GALLOP: I would like an opening,
24 yes, your Honor. I don't know if they were prepared
25 sometime prior to September 1974 because the checks which

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2 were written and send in were dated September 15th.

3 THE COURT: What do you say, Mr. Jossen?

4 MR. JOSSEN: Well, your Honor, the govern-
5 ment's position is that there will be evidence at the
6 trial that in November of 1973 the discrepancies for the
7 year '72 in the amount of over \$50,000 between that which
8 had been deposited into Mr. Meyers bank accounts and
9 that which had been recorded as his total gross receipts
10 became apparent to him.

11 And indeed at the same time he made a state-
12 ment to his accountant who will testify and to a Revenue
13 agent that the monies could be explained from some source
14 which it is apparent was a non-taxable source.

15 Now, it was not until --

16 THE COURT: What kind of source?

17 MR. JOSSEN: Your Honor, the defendant
18 stated that the money he thought came from either monies
19 that his father had turned over to him for the manage-
20 ment of his father's affairs, claiming that his father
21 was not competent or monies that had been turned over
22 to him in connection with his children.

23 That was the explanation that he gave on
24 two occasions on the same day that the audit took place
25 that the discrepancies became apparent.

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2 THE COURT: Doesn't that all go to the
3 weight of evidence, something which the jury peculiarly
4 is empowered to deal with. Why shouldn't I admit the
5 returns. I will clearly admit them if he took the
6 stand. I don't know why I should not admit them in any
7 event.

8 MR. JOSSEN: Determining within the Court's
9 discretion as to whether the evidence should come in, it
10 seems to me there must be a weighing as your Honor under-
11 stands between the probative value of the evidence and
12 its tendency to create unfair prejudice for either side.

13 THE COURT: That's not unfair prejudice.
14 All evidence is prejudicial. I will take them assuming
15 their authenticity is unquestioned. I will take them
16 without necessity of him taking the stand.

17 I will say it looks to me they have very
18 little probative force. It looks to me they are admissions
19 against interest that he had the taxable income.

20 MR. GALLOP: I want to say that Mr. Jossen
21 has copies which are in the government's possession. If
22 he wants to use them that's fine or I will make them
23 available.

24 MR. JOSSEN: I will not object on the
25 grounds of authenticity.

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14

May I submit to the Court a supplementary request on the charge with respect to those returns?

THE COURT: Yes, certainly. Do I have all of them?

MR. GALLOP: Mine were delivered Tuesday of last week.

MR. JOSSEN: You have the government's, your Honor.

THE COURT: I will be in recess, gentlemen.

(Recess)

(In open court - jury present)

THE COURT: Mr. Jossen, you may make an opening statement on behalf of the government.

MR. JOSSEN: Thank you, your Honor.

May it please the Court, Judge Brieant, Mr. Gallop, ladies and gentlemen of the jury, good morning.

This is a criminal trial in which the defendant, Harvey Meyers, is charged with tax evasion for the years 1971 and 1972. The indictment in this case alleges that Harvey Meyers attempted to evade the payment of the proper income taxes which were due and owing by him to the federal government for the years 1971 and 1972 by filing false and fraudulent income tax returns for those years, in which Mr. Meyers' taxable

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2 income was knowingly and deliberately understated.

3 In 1971 by over \$21,000 and in 1972 by
4 over \$80,000.

5 Now, his Honor introduced me to you just
6 a little while ago but let me introduce myself again.
7 My name is Robert Jossen and I'm an Assistant United
8 States Attorney in this judicial district which is the
9 Southern District of New York.

10 It is my responsibility and my privilege
11 to represent the United States in the presentation of this
12 criminal trial to you. To assist me in the presentation
13 of the case is Mr. Timothy Hartnett who was seated at
14 counsel table just a little while ago and who will be
15 back a little shortly I'm sure and he is a Special Agent
16 for the Internal Revenue Service. You may see Mr.
17 Hartnett and myself conferring from time to time in
18 the course of this trial.

19 Now, I have told you generally what this
20 case is about. Let me give you some more detail as to
21 what the government expects the evidence will show at
22 the end of what should be a fairly short trial.

23 In 1971 and 1972, Harvey Meyers, the
24 defendant, was a stock broker, a man who had his own seat
25 on the New York Stock Exchange here in New York. Mr.

1 jpjw
2 Meyers was what is known as a \$2 broker. What that means,
3 very simply, is that Mr. Meyers was a stock broker on
4 the Exchange who would handle, buy and sell transactions
5 for other brokers and other brokerage concerns as opposed
6 to dealing directly with retail consumers or people who
7 are trying to buy or sell stocks on their own.

8 And the way Mr. Meyers' work proceeded
9 was as follows:

10 Mr. Meyers would receive, on the floor of
11 the Exchange, a request from another brokerage concern,
12 such as example, Merrill Lynch, asking him to take care
13 of a transaction on the floor of the Exchange, either to
14 buy or sell certain stocks. Mr. Meyers would then
15 proceed to carry out that transaction on behalf of
16 Merrill Lynch.

17 Now, in return for his services, Mr.
18 Meyers was paid a commission for each sale that he engaged
19 in or each purchase that he engaged in by the brokerage
20 concern for whom he was transacting that particular
21 purchase or sale.

22 Now, let me explain to you what the evidence
23 will show was the manner in which Mr. Meyers actually was
24 paid.

25 At the end of each month in 1971 and 1972,

Mr. Meyers would submit to each of the brokerage concerns for whom he had transacted business in that month, a slip of paper called a commission advice in which he would, in effect, bill that particular brokerage concern for the dollar amount of his commissions due to him based on the transactions that he had engaged in in the prior month.

Now, the brokerage concern would then take these particular commission advices, decide whether it was proper to pay the advices, in other words, whether the work had actually been done, and then if it approved the payment, would forward the commission advice together with an approval for payment to a company known as the Stock Clearing Corporation, which was affiliated with the New York Stock Exchange.

The Stock Clearing Corporation was in effect a middleman. What the Stock Clearing Corporation would do is, it would gather together all of the approvals for payment from the various brokerage concerns which Mr. Meyers had billed for the preceding month, would figure out exactly how much Mr. Meyers was entitled to in total commissions for that month and on about the 15th day of the month after the transactions had actually taken place, would send to Mr. Meyers a single check in payment of all of his commissions which had been submitted

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2 to the Stock Clearing Corporation by the various brokerage
3 concerns for which Mr. Meyers had transacted business
4 in the preceding month.

5 Now, together with that single commission
6 check, Mr. Meyers would also be sent a statement from the
7 Stock Clearing Corporation. A statement which was called
8 a commission bill settlement statement which would very
9 simply reflect the total dollar amount that Mr. Meyers
10 was receiving in commissions based upon the transactions
11 which had taken place the month before.

12 That very simply is the way that Mr. Meyers
13 received his commissions for the years 1971 and '72 as
14 the evidence will show you.

15 Now, in about March of 1972 Mr. Meyers
16 went to the large accounting firm of Ernst & Ernst to
17 have his individual tax returns for 1971 prepared.

18 And, at that time, met with an accountant
19 by the name of James Crumlish. Mr. Crumlish was an
20 employee of Ernst & Ernst, a certified public accountant
21 who was assigned to the preparation of Mr. Meyers
22 individual tax return for 1971.

23 At this meeting with Mr. Crumlish, Mr.
24 Meyers told Mr. Crumlish how much in commissions Mr.
25 Meyers said he had earned for the year 1971.

The evidence will show that Mr. Crumlish was advised by Mr. Meyers that for the year 1971, Mr. Meyers had earned \$89,000 in commission receipts for 1971.

At the same time, Mr. Meyers gave to Mr. Crumlish an adding machine tape, a tape which in handwriting that was placed there by Mr. Meyers on the bottom, said total gross dollar commissions and again, had the figure of \$89,000-some odd.

At this time, Mr. Meyers also gave to Mr. Crumlish a stack of commission advices. These were the bills that Mr. Meyers had submitted to the various brokerage concerns for his earnings for the prior year.

Now, Mr. Meyers also gave to Mr. Crumlish a schedule of expenses and deductions which Mr. Meyers wanted to be computed and taken off of the 1971 tax return.

Now, on the basis of the information which Mr. Meyers turned over to Mr. Crumlish, Mr. Crumlish prepared and proceeded to prepare the 1971 joint individual tax return for Harvey Meyers and his wife, Maria Meyers.

That return, after it was prepared, was delivered to Mr. Meyers and his wife, Mr. Meyers signed the return and the return was filed with the Internal Revenue Service.

The evidence will show, ladies and gentlemen,

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2 that unbeknownst to Mr. Crumlish but known to Mr. Meyers,
3 the 1971 tax return that was filed was false and fraudulent.
4 It was false and fraudulent because contrary to what Mr.
5 Meyers had told Mr. Crumlish were his total gross
6 receipts for commissions in 1971 of \$89,000-some odd,
7 in fact Mr. Meyers had earned \$190,000 in gross commissions
8 from the Exchange for the year 1971. An amount of money
9 that was known to him from two sources of information,
10 which I will come to in just a few minutes.

11 Now, for the tax return in connection with
12 the tax year 1972, Mr. Meyers followed a similar procedure.
13 In the early part of 1973 and March, Mr. Meyers again
14 went back to the accounting firm of Ernst & Ernst. This
15 time Mr. Meyers met with a different accountant, a man
16 by the name of Michael Rubin, also a certified public
17 accountant and also an employee of Ernst & Ernst.

18 Again, Mr. Meyers told Mr. Rubin the amount
19 of total gross commissions which Mr. Meyers said he had
20 earned for the year 1972. Again, Mr. Meyers submitted
21 an adding machine tape, which supposedly corresponded to
22 the total dollar amount of commissions which Mr. Meyers
23 said he had earned for 1972. Again, Mr. Meyers turned
24 over a stack of commission advices or the bills that
25 had been submitted to the various brokerage concerns.

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Now, the evidence will show that Mr. Meyers advised Mr. Rubin that for the year 1972, Mr. Meyers had received approximately \$100,000-some odd for total gross commission from the floor of the New York Stock Exchange.

Again, Mr. Meyers turned over to Mr. Rubin information relating to deductions and expenses which Mr. Meyers wanted to be taken on the 1972 tax return. And, again, Mr. Rubin, as did Mr. Crumlish, took this information supplied to him by Mr. Meyers and proceeded to prepare the 1972 join individual tax return for Harvey Meyers and his wife Maria Meyers.

That return after it was prepared by Ernst & Ernst was delivered to Mr. Meyers. Mr. Meyers again signed the return, stating that it was truthful and accurate and submitted that return to the Internal Revenue Service.

Now, again, ladies and gentlemen, the evidence will show that unbeknown to Mr. Rubin but known to Mr. Meyers that 1972 income tax return was false and fraudulent. The evidence will show that although Mr. Meyers told Mr. Rubin that he had received \$100,000-some odd in commission receipts, in fact Mr. Meyers had received over \$150,000 in total gross commission receipts

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2 for 1972. Receipts, that again, were not reported
3 because Mr. Meyers did not tell them to Mr. Rubin.

4 The evidence will also show that the 1972
5 individual income tax return was false and fraudulent
6 in another respect. That respect was the omission of a
7 \$25,000 repayment of a loan which Mr. Meyers received
8 during the year 1972.

9 Let me tell you briefly what the details
10 of that transaction will be shown by the evidence to have
11 been.

12 In 1971, Mr. Meyers loaned \$25,000 to his
13 brother-in-law, a man by the name of Marcelino Fernandez.
14 Supposedly for investment in a company which Mr. Fernandez
15 was an officer of in Puerto Rico, known as Frozens,
16 Incorporated.

17 Now, when Mr. Meyers spoke with Mr. Crumlish
18 about the preparation of the 1971 individual tax return,
19 Mr. Meyers told Mr. Crumlish that the \$25,000 loan had
20 gone bad. In other words, Mr. Meyers told Mr. Crumlish
21 that the loan would not be repaid. Consequently, that
22 \$25,000 loan was taken as a total deduction from Mr.
23 Meyers' tax return for 1971. In other words, the full
24 \$25,000 was just taken off dollar for dollar against the
25 total gross receipts which Mr. Meyers had already told

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2 Mr. Crumlish about.

3 Now, in 1972, the next year, that \$25,000
4 was repaid to Mr. Meyers. And the evidence will show
5 that having received the repayment of that \$25,000 and
6 having previously taken it as a favorable deduction on
7 his 1971 return, the \$25,000 should have been declared
8 as income for 1972.

9 And the evidence will show that that \$25,000
10 was not declared as income and it was not declared as
11 income because Mr. Meyers deliberately did not tell Mr.
12 Rubin in 1972 about the \$25,000 repayment, even though
13 Mr. Meyers was fully aware of the repayment of the loan,
14 as you will see from a receipt signed by Mr. Meyers in
15 December of 1972 acknowledging full repayment of the
16 \$25,000.

17 In sum, ladies and gentlemen, the evidence
18 here will establish that in 1971, Mr. Meyers reported
19 his taxable income as \$21,587, when in fact, as he knew,
20 his taxable income was really \$51,438.

21 The evidence will also show that in 1972
22 Mr. Meyers reported his taxable income on his tax return
23 as \$52,366, when in fact, as he knew, his taxable income
24 was \$134,304. Figures that you obtain by adding the
25 unreported gross commissions together with the \$25,000 loan.

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24

Now, how will the government prove these things to you? Well, we will prove to you that Harvey Meyers deliberately and knowingly attempted to evade his taxes for 1971 and 1972 by calling as witnesses, among others, Michael Rubin, the accountant who prepared the 1972 tax return. James Crumlish, the accountant who prepared the 1971 tax return. Both of whom you will hear are no longer working with Ernst & Ernst having gone on to other jobs.

We will also call as witnesses, representatives of the New York Stock Exchange and the Stock Clearing Corporation who will tell you about certain documents known and signed by Mr. Meyers which clearly establish exactly how much money he had received in each of those years.

I will just tell you very briefly what those documents are. First from the Stock Clearing Corporation, you will see stock settlement or commission bill settlement statements. Statements which accompanied the single check in each month that was sent by the Stock Clearing Corporation to Mr. Meyers and which showed the total dollars that he was receiving in commissions for the preceding month.

You will also see his documents which are

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known as Form 600. This is a form that the New York Stock Exchange requires every member on the Exchange to file at the end of each month to show exactly how much money that broker had earned in the preceding month in commission because the Stock Exchange takes a one percent commission on the total that's on the Form 600. You will see these exhibits when they are offered in evidence here.

We will also produce for you various documents with respect to the Fernandez loan. Documents which show the payment of \$25,000 in 1971 and the repayment back to Mr. Meyers in 1972 as being acknowledged by him on receipts that he signed.

Ladies and gentlemen, Harvey Meyers, the defendant, is entitled to have you render a verdict in this case which is free from sympathy, from prejudice or bias. A verdict which is based solely on the facts as you find them within the law as will be given to you by his Honor, Judge Brieant, at the end of this case.

All the government asks is that you pay very close attention to all of the evidence that you hear in this case. Evidence which comes to you from the witness stand, evidence which comes to you from exhibits and documents which are offered into evidence.

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2 We ask you to keep an open mind as his
3 Honor said, until you have hear all the evidence, until
4 you have heard the closing arguments of counsel and until
5 his Honor has instructed you fully on the law which must
6 govern your deliberation.

7 By doing these things, you will, as his
8 Honor indicated to you, afford a fair trial to both sides
9 as each is entitled to under our system of law.

10 I am confident that when you return from
11 your deliberations at the close of this case, you will
12 return with a verdict which is consistent with the facts
13 in this case and a verdict which is consistent with the
14 solemn oath of jurors which each of you have taken this
15 morning.

16 Thank you very much for your attention.

17 THE COURT: Mr. Gallop, you may make an
18 opening statement at this time if you wish.

19 MR. GALLOP: Your Honor, Mr. Jossen, Mr.
20 Hartnett, ladies and gentlemen of the jury:

21 As you know, I represent the defendant
22 Harvey Meyers, and as is often the case after I hear the
23 government's opening statement, I wonder to some respect
24 what I am doing in this courtroom.

25 Mr. Jossen portrayed to you the outline of

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27

2 the government's case. In doing so, it would appear there
3 is very little left to this case. So, I would ask you at
4 the outset to keep an open mind and listen to all of the
5 evidence and apply your good common sense to the evidence
6 as it comes out of the mouths of the witnesses and in
7 analyzing the documents.

8 Now, Mr. Jossen used an expression which I
9 think is really the kernel of this case. That is
10 unknown to Mr. Crumlish, known to Mr. Meyers. Unknown
11 to Mr. Rubin, known to Mr. Meyers.

12 You recall Mr. Crumlish and Mr. Rubin were
13 the two accountants who worked for Ernst & Ernst who
14 prepared the tax returns in question.

15 Now, I am sure the government will introduce
16 these tax returns and when you look at them as you will
17 when you deliberate, you will find that not only did Mr.
18 Meyers and his wife Maria sign the tax returns, but you
19 will find alongside of their signatures there is another
20 signature and it is the signature of the preparer. Because
21 the tax return has a special place for the preparer to
22 sign it, because many of us, including Mr. Meyers, go to
23 people whose expertise is far greater than theirs to
24 prepare their tax returns.

25 So, Mr. Meyers relied upon his accountants

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2 to prepare a tax return for him. I might say and I am
3 sure the witnesses will bring this out on their examination
4 or cross examination, that when Mr. Meyers picked account-
5 ants to handle his tax returns, he picked the best. He
6 picked one of the largest, most prestigious accounting
7 firms in the United States, in the world.

8 So, what I think we have to understand is
9 what is the true issue in this case. The true issue in
10 this case is not whether or not Mr. Meyers paid the exact
11 tax or declared the exact income on his original return,
12 because that alone does not constitute a crime.

13 The question is, what was in Mr. Meyers
14 mind at the time he signed these tax returns. He signed
15 them in good faith, was it an honest mistake or was he
16 intending to defraud the government.

17 If that is the issue, you will find that
18 most of the evidence probably won't be controverted.
19 There will be a basic agreement on most of the important
20 aspects of this case.

21 What you as jurors will have to do is to
22 analyze this evidence and analyze the facts and circum-
23 stances as they took place, when the returns were filed.
24 Not in 1977, not in 1976, but at the time when the returns
25 were filed.

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29

We are dealing with a 1971 tax return, so we are talking about a date on or about April 15, 1972. And in dealing with the 1972 return, we are dealing with a date on or about April 15, 1973.

What you must decide as jurors, is at that time was Harvey Meyer intending to defraud the United States. In fact, I think the words that Mr. Jossen used was did he knowingly and deliberately file a false and fraudulent return. That is the issue in this case.

You will see when an audit was conducted and it was brought to Mr. Meyers' attention amended returns were filed, picking up substantially all of the commission income leaving in dispute whether or not the \$25,000 loan was a valid deduction or not.

But, I am sure as you all realize from your own experience in life, owing taxes, disagreeing with the government in and of itself is not a crime.

Again, I say to you, view the evidence in the context and the facts and the circumstances as they took place during the time that these returns were prepared by Mr. Meyers' accountants. Understand who had a responsibility for preparation of these returns and I think then you can weigh the evidence intelligently to see whether or not the government has proved to your satisfaction and

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2 beyond a reasonable doubt that Mr. Meyers intentionally,
3 knowingly and deliberately committed a crime at the time
4 he and his wife signed these tax returns.

5 I am sure after you hear all of the evidence,
6 you will come to the conclusion that the defendant is
7 not guilty.

8 Thank you.

9 THE COURT: Mr. Jossen, you may call your
10 first witness.

11 MR. JOSSEN: Your Honor, the government
12 calls Michael Rubin.

13
14 M I C H A E L R U B I N , called
15 as a witness by the government, being first
16 duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JOSSEN:

19 Q Mr. Rubin, I am going to stand back here to
20 make sure that all the members of the jury can hear your
21 testimony, so please keep your voice up.

22 Would you tell us how you are presently
23 employed?

24 A I am associated with the law firm of Harris
25 & Post.

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Rubin - direct

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2 Q Are you an attorney?

3 A I am.

4 Q When were you admitted to the Bar?

5 A In 1971.

6 Q And of what state was that?

7 A State of New York.

8 Q Do you hold any other professional degrees
9 at this time?

10 A Yes, I'm a certified public accountant as
11 well.

12 Q How long have you been a certified public
13 accountant?

14 A Since 1975.

15 Q Mr. Rubin, would you please tell us what
16 if any requirements you had to meet in order to become
17 a certified public accountant?

18 A Yes. I was required to have 36 credit hours
19 in accounting in an undergraduate school, complete the
20 degree and I passed a uniformed certified public account-
21 ant examination which was given by the American Institute.

22 Q Did you have any accounting experience
23 prior to the time that you become a certified public
24 accountant?

25 A Yes. I had diversified audit experience

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Rubin - direct

32

with Ernst & Ernst for at least two years before taking the examination.

Q When did you take the examination?

A I took it at various times until 1975.

Q Now, Mr. Rubin, would you please tell us what type of work you are presently doing at Harris & Post?

A I am involved in basically a general practice of law with a specialization in estates, trusts, some sort of litigation work we do and commercial corporate work.

Q Do you have occasion in your work at Harris & Post to do any tax related work?

A Yes. I also continue my practice as a certified public accountant and prepare tax returns for various clients.

Q Now, prior to the time that you commenced work at Harris & Post, please tell us where you were employed.

A I was employed with the certified public accounting firm of Ernst & Ernst.

Q How long were you employed at Ernst & Ernst?

A I was there until 1976.

1 jpjw

Rubin - direct

33

2 Q Starting when?

3 A From 1969 until 1976.

4 Q Now, where is Ernst & Ernst located?

5 A They are at 140 Broadway in New York City.

6 Q Would you tell us generally what type of
7 work you were doing at Ernst & Ernst during the period
8 of time that you were employed there?

9 A Yes. I was a member of the tax department
10 at Ernst & Ernst. My function was general servicing
11 of the tax needs of various individual defendants and
12 corporate clients.

13 Q How long were you in the tax department
14 itself at Ernst & Ernst?

15 A For the last five or six years that I was
16 with the firm. All but one or two years.

17 Q Would you tell us what position you occupied
18 at Ernst & Ernst prior to the time that you left the
19 firm?

20 A I was a supervisor in the tax department.

21 Q Now, Mr. Rubin, do you know a man by the
22 name of Harvey Meyers?

23 A Yes, I do.

24 Q Do you see Mr. Meyers in court today?

25 A Yes, I do.

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Rubin - direct

34

2 MR. GALLOP: We will concede identification.

3 THE COURT: It is conceded for the record,
4 this witness is capable of identifying Mr. Meyers, the
5 defendant.

6 Q Mr. Rubin, let me direct your attention to
7 the year 1973.

8 Did there come a time in that year when you
9 had occasion to work on the preparation of the income
10 tax return for Harvey Meyers and his wife for the fiscal
11 year 1972?

12 A Yes.

13 Q Would you tell us how you had occasion to
14 work on that return?

15 A Mr. Meyers was a client of Ernst & Ernst and
16 I was assigned his account in the latter portion of 1972
17 or the beginning of 1973.

18 Q Do you recall what Mr. Meyers' occupation
19 was at the time?

20 A Yes. I believe that he was -- he owned
21 his own seat on the New York Stock Exchange and carried
22 on a business as a broker on that -- in that capacity.

23 Q Was Mr. Meyers married at the time that you
24 prepared his tax return?

25 A Yes, he was.

jpjw

Rubin - direct

35

1 Q Do you know the name of Mr. Meyers' wife?

2 A Yes, it was Maria Meyers.

3 Q Now, returning your attention to the prepara-
4 tion of Mr. Meyers 1972 income tax return, do you recall
5 when you first started to work on the preparation of that
6 return?
7

8 A Yes. It was either in late February or the
9 beginning of March, 1973.

10 Q Would you tell the jury, please, how you
11 commenced working on the preparation of that return?

12 A Yes. I had had a meeting with Mr. Meyers
13 in my office at which time he gave me the information
14 in connection with his income and expenses for 1972.

15 After that meeting, I then prepared the
16 tax return based upon that information.

17 Q Now, so that we are clear, where exactly
18 did this meeting take place as best you can recall?

19 A It took place at my office at Ernst & Ernst,
20 140 Broadway.

21 Q Was anyone else other than Mr. Meyers and
22 yourself present at this meeting?

23 A No.

24 Q Now, would you tell us in what form was
25 the information that Mr. Meyers gave to you at this time?

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Rubin - direct

36

1 A Yes. Mr. Meyers came to the office and he
2
3 had schedules of his income and expenses and deductions
4 on lists of paper.

5 Q Do you recall whether Mr. Meyers gave you
6 any other materials at that time?

7 A Yes. He also gave me a diary. He gave me
8 a package of bank statements and he gave me a packet of
9 transaction slips of individual transactions which had
10 indicated his income from the Stock Exchange.

11 Q Now, can you tell us -- withdrawn.
12
13 Mr. Rubin, do you recall whether these
14 documents that Mr. Meyers gave to you in 1973 were
15 themselves in any type of container?

16 A Well, the bank statements were wrapped up
17 either with a rubberband or with some sort of string and
18 the stock transaction slips were likewise wrapped up
19 either with a rubberband or with some string.

20 The diary was -- it may have had a rubberband
21 around it to keep it from opening up.

22 Q Now, was there anything which indicated to
23 you the total of the packet of commission advices that
24 you received from Mr. Meyers?

25 A Yes, there was.

 Q Would you tell us what that was?

jpjw

Rubin - direct

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1 A Wrapped around the outside of this package
2
3 of transaction slips was an adding machine tape and the
4 tape was wrapped around it with a rubber band or a string
5 over it.

6 There was -- the end of the tape was obvious.
7 It was on the top. And the number on the top of the tape
8 was the total which corresponded to the gross receipts
9 that Mr. Meyers had indicated on the separate schedules.

10 Q Now, as best you can recall, was the total
11 gross receipts indicated in some place other than this
12 adding machine tape?

13 A I believe, although I am not certain, that
14 there was a sheet listing the item of income which
15 corresponded to the total which was on the tape.

16 Q At the time that you first met Mr. Meyers
17 in 1973, do you recall whether any conversation took place?

18 A Well, I recall that I discussed various aspects
19 of his income and expenses in connection with the prepara-
20 tion of the '72 return although I don't recall specifically
21 what that conversation was.

22 Q Do you recall whether you took notes during
23 this conversation at all?

24 A Yes, I did take notes.

25 Q Mr. Rubin, let me show you what has been

1 jpjw

Rubin - direct

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2 previously marked as Government Exhibit 6-A for identifi-
3 cation and ask you to read that to yourself and tell us
4 when you have completed reading it.

5 (Pause)

6 A I have completed it.

7 Q Can you tell us, Mr. Rubin, does Government's
8 Exhibit 6-A for identification, refresh your recollection
9 as to any more of the specific substance of your conver-
10 sation with Mr. Meyers in 1973?

11 A Yes, it does.

12 Q Would you tell us, as best you can recall,
13 what specific substance you remember of the conversation
14 with Mr. Meyers in 1973?

15 A I remember that we had discussed the various
16 specific items of gross income that Mr. Meyers had and
17 they included the income from the Stock Exchange, interest
18 income from a savings bank and an income figure as a
19 distributiveship of partnership income from a partnership
20 that Mr. Meyers was connected with.

21 Q Do you recall whether if there was any
22 specific mention of a total figure at that time with
23 respect to gross commissions received by Mr. Meyers for
24 the year 1972?

25 A Yes.

jpjw

Rubin - direct

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1 Q Do you recall what that figure was?

2 A It was the figure that was on the adding
3 machine tape.

4 Q Do you remember specifically what the amount
5 of that figure was?

6 A I believe it was \$100,231.

7 Q Now, did you have any conversation with Mr.
8 Meyers at the time of this meeting in 1973 with respect
9 to any of the other materials that Mr. Meyers gave to you
10 at that time?

11 A Yes, I did.

12 Q Tell us as best you can recall what the
13 substance of that conversation was.

14 A Well, the other information that Mr. Meyers
15 had given to me were the stock transactions, and the bank
16 statements, which Mr. Meyers had asked us to store that
17 in our files.

18 Q Do you recall, had you said anything to
19 Mr. Meyers prior to the time -- withdrawn.

20 Had you said anything to Mr. Meyers with
21 respect to these documents prior to the time that Mr.
22 Meyers had asked you to store them in the files?

23 A Yes. I asked him what he wanted me to do
24 with these documents, since he had given me lists of the
25

1 jpjw Rubin - direct 40
2 items of income expenses already.

3 Q Did Mr. Meyers say anything else to you
4 other than to store the documents?

5 A No, just to store them.

6 Q Now, Mr. Rubin, after your meeting with
7 Mr. Meyers, would you tell us as best you can recall,
8 what if any specific steps you took in connection with
9 the preparation of the 1972 individual tax return for
10 Mr. Meyers and his wife?

11 A After Mr. Meyers left my office, I then
12 analyzed the income, the deductions and the expenses and
13 I prepared the appropriate sheets necessary to have the
14 tax return processed.

15 We used a computer to prepare the tax
16 return and we had to input the information in various
17 methods on specific sheets.

18 After analyzing the income and appropriately
19 classifying them, I then entered them on the computer
20 sheets for the computer to process the return.

21 Q Now, Mr. Rubin, you have indicated that
22 you analyzed the information and classified it.

23 Would you please explain to the jury what
24 you mean by those terms, exactly what you did?

25 A Yes. When I say I analyzed it, I had all

1 jpjw

Rubin - direct

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2 the information that Mr. Meyers had submitted to me and
3 I determined which items were taxable and which were non-
4 taxable. Which items could be used as a deduction and
5 which could not. Whether they should be expensed or
6 capitalized and depreciated.

7 I then classified them in the appropriat
8 place whether they were itemized deductions or whether
9 they were business expenses and that's basically the
10 analysis that I carried out with respect to his return.

11 Q Now, Mr. Rubin, do you recall at your
12 meeting with Mr. Meyers any of the specific conversation
13 with respect to any of the deductions or expenses based
14 on information Mr. Meyers had given to you?

15 A I don't recall the specific conversations.
16 I don't recall anything more specific than what I have
17 indicated.

18 Q I place before you again Government's
19 Exhibit 6-A for identification and I will ask you to read
20 to yourself the line to which I am pointing and tell us
21 when you have completed reading that.

22 (Pause)

23 A I have completed it.

24 Q Having read the line to which I have pointed,
25 does that refresh your recollection as to any of the

jpjw

Rubin - direct

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specific conversation with Mr. Meyers with respect to any item of expense or deduction?

A Yes, it does.

Q Would you tell us as best you can recall what that particular item was and the substance of that conversation?

A Yes. Mr. Meyers had expenses in connection with traveling to the Caribbean, various islands in the Caribbean, which he had incurred in an attempt to recapture an investment that he had previously made. The expenses were travel expenses and they were claimed on the return as a deduction.

Q Do you recall the amount of the investment?

A Yes, I do.

Q Can you tell us the amount of investment?

A Yes. I recall that the investment was \$25,000 and it had been claimed previously as a bad debt.

Q Do you recall the name of the party or company in which or with which this money had been invested?

A No.

Q Did Mr. Meyers indicate to you at that time whether or not --

THE COURT: Did he tell, if you please. Did he say to you, not indicated.

jpjw

Rubin - direct

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MR. JOSSEN: I apologize and withdraw the question.

Q Did Mr. Meyers tell you at that time whether or not he had obtained back any of the \$25,000?

A He did not. He did not tell me he had obtained any of the money back.

Q Mr. Rubin, I place before you what has previously been marked as Government Exhibit 5 for identification.

Can you identify that exhibit?

A Yes. This is the Ernst & Ernst New York tax department file for 1972 of Harvey Meyers.

Q Would you please take a moment and examine the contents of that file?

(Pause)

Mr. Rubin, are you familiar with the contents of the file which is Government Exhibit 5 for identification?

A I am.

Q Can you tell us generally what documents are contained in Government's Exhibit 5?

A Yes. We have copies of the 1972 tax return. The computer input sheets which we used in the preparation of the tax return and various miscellaneous

jpjw

Rubin - direct

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schedules. A copy of the 1971 tax return and some notes from another individual in the firm. It is a tax file.

Q Mr. Rubin, can you tell us whether it is the ordinary and regular course of business for Ernst & Ernst to keep documents such as those contained in Government's Exhibit 5 for identification?

A I can.

MR. GALLOP: I think I can save the Court some time if I can see that exhibit.

THE COURT: All right.

(Pause)

MR. GALLOP: No objection.

THE COURT: Exhibit 5 will be received.

(Government Exhibit 5 received
in evidence)

THE COURT: Is that for both years?

MR. JOSSEN: No, your Honor, only for 1972.

Q Mr. Rubin, having examined the contents of Government's Exhibit 5 in evidence, can you tell us whether you recall if there were any other work papers prepared by you at the time that you worked on Mr. Meyers tax return that are not in Government's Exhibit 5?

A Yes, there are other documents which are

1 jpjw

Rubin - direct

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2 not here.

3 Q Now, let me direct your attention to
4 Government Exhibit 5-A in evidence.

5 Can you identify that specific form for
6 the jury?

7 A Yes, I can. This form or these forms are
8 computer input sheets that are used in preparing the
9 tax return.

10 Q Do you recognize your handwriting on any
11 of those sheets?

12 A I recognize my handwriting on each of the
13 sheets, yes.

14 Q Now, Mr. Rubin, can you tell us if there
15 is any place on the form which is Government's Exhibit
16 5-A in evidence in which you inserted the total gross
17 commissions told to you by Mr. Meyers?

18 A Yes, there is a sheet.

19 Q Have you turned to that sheet?

20 A I have.

21 Q Would you tell us where you obtained --
22 withdrawn.

23 Would you tell us, first, any identifying
24 marks that appear on that particular sheets?

25 A Would you rephrase that question?

jpjw

Rubin - direct

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Q Can you tell us if there is any title printed on the sheet?

THE COURT: Is the sheet in evidence?

MR. JOSSEN: Yes.

THE COURT: It speaks for itself. Whatever title is on there, the jury can read it.

Q Mr. Rubin, would you tell us where you obtained the figure for total gross receipts which appears in that form?

A Yes. This is the figure which was given to me by Mr. Meyers.

Q Would you tell us what that figure is, please?

A \$100,231.

Q Now, Mr. Rubin, would you tell us for what particular form, the form that you are looking at, was designed?

A This is the form that is used to report business income.

Q Could you tell us what would be the corresponding schedule on the tax return that that information would appear on?

A This goes on Schedule C, which reports the business income of the taxpayer.

jpjw

Rubin - direct

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Q After you prepared Government's Exhibit 5-A in evidence, would you tell us what was done with that?

A This form is turned over to another individual in my department, the tax department, who would review my work.

Q Do you know the name of that person?

A Kenneth Weiss.

Q Was there a time when you got Government's Exhibit 5-A in evidence back from Mr. Weiss?

A No. It was sent directly on from him to the computer center for preparation.

Q Now, Mr. Rubin, when you placed on Government's Exhibit 5-A in evidence the figure for total gross commissions received by Mr. Meyers, had you compared that figure to the stack of commission advices which you testified Mr. Meyers turned over to you?

A I compared it with the tape total which was wrapped around the commission advices.

Q Did you compare it to the specific commission advices themselves?

A No, I did not.

Q Now, did there come a time when you received from the computer center a printed tax return for 1972 for Harvey Meyers?

jpjw

Rubin - direct

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A Yes.

Q Can you tell us what if anything you did with that return after you received it from the computer center?

A Yes. I reviewed it to make sure that the information which I had put into the computer came back in a correct fashion.

Q I place before you what we have marked as Government's Exhibit 2 for identification and ask you if you can identify that exhibit.

A I can.

Q Can you tell us how you can identify the exhibit?

A It's a photocopy of the tax return and it has my signature on it and that's my signature.

Q Can you tell us what Government Exhibit 2 for identification is?

A It is a photocopy of the 1972 U.S. Individual Income Tax Return Form 1040 for Harvey S. and Maria C. Meyers.

MR. JOSSEN: I offer in evidence Government's Exhibit 2.

MR. GALLOP: No objection.

THE COURT: Received in evidence.

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Rubin - direct

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2 (Government Exhibit 2 received
3 in evidence)

4 MR. JOSSEN: Your Honor, I would ask Mr.
5 Gallop to stipulate that Government's --

6 THE COURT: Any requests for stipulation
7 you can make privately and then when you have agreed on
8 it, I will take it.

9 MR. GALLOP: We have agreed on it.

10 THE COURT: Don't offer to stipulate in
11 front of the jury in case he says no.

12 MR. JOSSEN: I have done that.

13 It is stipulated by and between the defendant
14 and the government that Government's Exhibit 2 is a
15 correct and accurate copy of the 1972 individual tax
16 return for Harvey S. and Maria C. Meyers as it was
17 filed with the Internal Revenue Service.

18 Is that correct, Mr. Gallon?

19 MR. GALLOP: Correct.

20 THE COURT: Members of the jury, when a
21 fact is stipulated, the jury may regard that stipulation
22 with the same force and effect as if a witness had so
23 testified under oath. That procedure is permitted in
24 order to save time to dispose of factual matters where
25 they can be agreed upon in that fashion.

jpjw

Rubin - direct

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Where was it filed?

MR. JOSSEN: Your Honor, I believe it was filed in New York.

THE COURT: Does it say so on it?

MR. JOSSEN: It does not have the specific indication on it.

THE COURT: All right.

BY MR. JOSSEN:

Q Mr. Rubin, did there come a time when you caused Government's Exhibit 2 in evidence, the 1972 tax return, to be delivered to Mr. Meyers?

A Yes.

Q Can you tell us as best you can recall when that return was delivered to Mr. Meyers?

A On or about March 14, 1973.

Q Can you tell us how the return was delivered to Mr. Meyers?

A Yes. I personally delivered it to his residence.

Q Do you recall where that was?

A It was 160 East 65th Street, New York City.

Q Do you remember whether that was a private house or an apartment house?

A Yes, it was an apartment house.

1
2 Q Did you see Mr. Meyers at that time?

3 A I did.

4 Q Was anyone else present?

5 A Yes.

6 Q Who else was present?

7 A Mrs. Meyers.

8 Q Do you recall whether there was any conver-
9 sation between yourself and Mr. Meyers at that time?

10 A Yes.

11 Q Would you tell us as best you can recall
12 the substance of that conversation?

13 A I had instructed Mr. Meyers to make certain
14 estimated tax payments in connection with the 1973 tax
15 return and at that time he had expressed displeasure at
16 the amounts that I had indicated to be paid.

17 Q Now, do you recall whether there was any
18 other conversation with Mr. Meyers at that time?

19 A I don't recall anything further.

20 Q Did Mr. Meyers, to your knowledge, examine
21 the return, the 1972 return which is Government's Exhibit
22 2 in evidence in your presence?

23 A He looked at the first page of the return.

24 Q Did you prepare any other returns for Mr.
25 Meyers in the year 1972?

1 jpjw

Rubin - direct

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2 A Yes, I did.

3 Q Can you tell us what other returns you
4 prepared for him?

5 A I prepared the New York State Income Tax
6 Return and the New York City Income Tax Return and the
7 unincorporated business tax returns for both New York
8 City and New York State.

9 THE COURT: You brought all of them up
10 there with you on that day?

11 THE WITNESS: Yes, your Honor.

12 Q Can you tell us where on Government Exhibit
13 2 in evidence is reported the total gross commissions
14 as you were advised of them by Mr. Meyers?

15 A It is on Line 1 of Schedule C which is the
16 schedule which reports income from a business.

17 MR. JOSSEN: With the Court's permission,
18 may I have the witness tell the jury what the figure
19 is that reads there?

20 THE COURT: If it is in evidence, you
21 may read it.

22 MR. JOSSEN: The figure which appears here
23 on Line 1 is \$100,231.

24 Q Mr. Rubin, you testified earlier to a con-
25 versation with Mr. Meyers with respect to travel for the

1 jpjw

Rubin - direct

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2 \$25,000 investment.

3 Do you recall whether any amount of money
4 was ultimately deducted on the 1972 tax return for that
5 expense?

6 A Yes.

7 Q Can you tell us where in Government Exhibit
8 2 in evidence that figure is contained?

9 A Yes. It is listed in a supporting schedule
10 in support of Schedule C. It is a schedule entitled
11 Details of Other Expenses.

12 Q Can you tell us what particular line
13 contains the figure which Mr. Meyers told you with
14 respect to the travel for the \$25,000 investment?

15 A It is in the figure entitled Travel and
16 Entertainment.

17 Q What is the total figure that appears there?

18 A \$9,815.

19 Q It is correct, is it not, that that line
20 consists solely with the travel in connection with the
21 \$25,000 investment?

22 A Yes, it consists of travel and entertain-
23 ment expenses.

24 THE COURT: I don't understand your answer.
25 It does or does not pertain solely to the recovery of the

1 jpjw Rubin - direct 54
2 investment?

3 THE WITNESS: No. There are other items
4 in that deduction as well as travel.

5 Q Now, Mr. Rubin, can you tell us what if
6 any other items of income you were told Mr. Meyers had
7 by Mr. Meyers in connection with the preparation of the
8 1972 return?

9 A Mr. Meyers also indicated that he had
10 interest income from a savings bank and income from a
11 partnership.

12 Q Can you tell us where on Government
13 Exhibit 2 in evidence those items are reported?

14 A Yes, I can. The interest income is reported
15 on Schedule B, Part 2, and the income from the partnership
16 is reported on Schedule E, Part 3.

17 Q Now, Mr. Rubin, you are familiar with a
18 W-2 form, are you not?

19 A Yes, I am.

20 Q Did Mr. Meyers present any W-2 forms
21 to you in connection with any of his income for 1972?

22 A No, he did not.

23 Q Can you explain to the jury what a W-2 form
24 is?

25 MR. GALLOP: Your Honor, if none were

1 jpjw Rubin - direct 55

2 presented I don't see why --

3 THE COURT: Is there an objection?

4 MR. GALLOP: Yes.

5 THE COURT: Sustained. Just say I object.

6 Q Mr. Rubin, did Mr. Meyers give to you any

7 1099 forms in connection with any income reported on

8 Government Exhibit 2 in evidence?

9 A I'm not sure whether I received a 1099 form

10 for the interest.

11 I am not sure. But I received the specific

12 amount of the interest from him.

13 Q Do you recall whether you received any

14 other 1099 forms?

15 A I received no other 1099 forms.

16 Q Mr. Rubin, after you prepared the 1972

17 individual tax return for Harvey Meyers and his wife,

18 did there come a time when you had further conversation

19 with Mr. Meyers with respect to that return?

20 A Yes.

21 Q Do you recall when that conversation took

22 place?

23 A That took place on the date of the examina-

24 tion of that return.

25 Q Do you remember when that was?

jpjw

Rubin - direct

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A That was in the fall of 1973.

Q Now, can you explain to us how you became aware of an examination of the return?

A Yes. Mr. Meyers contacted me previously to that time and advised me that his 1972 tax return was going to be examined by the Internal Revenue Service.

Q Did you thereafter continue to represent Mr. Meyers with respect to that audit? That is, after your first conversation with Mr. Meyers.

A Yes, I did.

Q Now, where did the audit of Mr. Meyers' 1972 tax return take place?

A In the offices of Ernst & Ernst.

Q Do you recall who else was present with you, if anyone, at the time that the audit started?

A The Internal Revenue agent and I were the only two people who began the examination. Later on -- in the progression of the examination another tax agent joined the meeting and later on in the meeting, Mr. Meyers joined the meeting.

Q Do you remember the name of the Internal Revenue Service agent who was there?

A Mr. Grau.

Q Directing your attention to the time when

1 jr jw

Rubin - direct

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2 you met with Mr. Grau in connection with the audit,
3 without telling us what if any conversation took place
4 between yourself and Mr. Grau, tell us what if anything
5 you observed Mr. Grau do at that time.

6 Q Well, we went over --

7 THE COURT: Was Mr. Meyers present at
8 this time?

9 MR. JOSSEN: I believe the testimony was
10 he was not, your Honor.

11 MR. GALLOP: Can I hear the question
12 again?

13 THE COURT: Reframe the question.

14 Q Mr. Rubin, prior to the time that Mr.
15 Meyers arrived at the audit, can you tell us what if
16 anything you observed Mr. Grau do in connection with the
17 audit?

18 A We went over the various items of expenses
19 which were included in the tax return. We also went
20 over -- he went over the items of gross receipts.

21 Q Do you recall whether Mr. Grau -- withdrawn.
22 Can you tell us whether or not Mr. Grau
23 examined any specific documents at that time, prior to
24 the time that Mr. Meyers arrived?

25 A Yes. Mr. Grau examined the bank statements

jpjw

Rubin - direct

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for 1972 and he compiled a total of the deposits that were made in that bank account for the year 1972.

Q Now, did you do anything at that time after Mr. Grau compiled his total?

A Yes.

Q Tell us what you did.

A I verified his total by making my own list and adding my own schedule of numbers and I confirmed that his numbers were correct.

Q I show you what has previously been marked as Government's Exhibit 6 for identification and direct your attention to the third page in that exhibit and ask you if you can identify that page.

A I can.

Q Can you tell us what this page is?

A This is an individual listing of the deposits made in Mr. Meyers bank account when I had worked with the agent.

Q You prepared that list?

A This is my list, yes.

Q Can you tell us specifically what Government's Exhibit 6 for identification is, the entire file?

A Yes. This is the Ernst & Ernst New York tax department file for the examination of the 1972 tax

1 jpw

Rubin - direct

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2 return of Harvey Meyers.

3 Q Would you please examine the contents of
4 Government's Exhibit 6?

5 A Yes.

6 Q Could you tell us, Mr. Rubin, what documents
7 are contained in Government's Exhibit 6 for identification?

8 A The documents contained in this file pertain
9 to the 1972 examination of the tax return, as well as my
10 sheets which I had used in preparing the 1972 tax return.

11 When I had been notified of the examination,
12 I transferred certain documents from the regular '72
13 file into an IRS examination file so that I would have
14 them readily available.

15 Q Are you referring to Government Exhibit 5?

16 A Yes, I am.

17 Q Now, can you tell us what specific pages
18 in Government's Exhibit 6 for identification had been
19 prepared by you prior to the time that the audit
20 commenced?

21 A Yes, I can. It would be these four
22 column accounting sheets, green type of color which had
23 been prepared by me when I prepared the tax return.

24 In addition, there are yellow sheets which
25 are following that, which were the original sheets that

1 jpjw

Rubin - direct

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2 I had used in my interview of Mr. Meyers in preparing the
3 tax return.

4 Q Are you referring to Government's Exhibit
5 6-A for identification?

6 A Yes, that's Government's Exhibit 6-A.

7 There are also additional sheets in
8 connection with the preparation of the tax return when
9 I had compiled them and classified them for inclusion
10 on the computer sheets, which listed items of income
11 and expenses.

12 I have here a copy of the power of attorney.
13 There is a letter which I had written to Mr. Meyers
14 advising him I was able to move up the examination.
15 Copies of a request for him to sign the power of attorney.
16 A copy of the notification from Internal Revenue Service
17 that the 1972 tax return was being examined. Notes that
18 Mr. Meyers had called me on a specific date to tell me
19 that the return was being examined, and a photocopy of
20 the 1972 tax return with a copy of the transmittal letter.

21 Q Mr. Rubin, can you tell us whether Govern-
22 ment Exhibit 6 for identification consists of records
23 which are kept in the ordinary and regular course of
24 business which is kept by Ernst & Ernst?

25 MR. GALLOP: May I come up?

jpjw

Rubin - direct

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THE COURT: Certainly.

(At the side bar)

MR. GALLOP: With the exception of the transmittal letter of the file to me, I have no objection to these documents and will stipulate them into evidence for both years.

THE COURT: In that case may the transmittal letter be taken out?

MR. JOSSEN: I have no problem with that.

THE COURT: Take it out.

Thank you, gentlemen.

(In open court)

(Government Exhibit 6 received

in evidence)

BY MR. JOSSEN:

Q Mr. Rubin, with reference to the tape which appears affixed to the first yellow page in Government's Exhibit 6 in evidence, can you tell us, if you know, who prepared that tape?

A I prepared that tape.

Q When did you prepare it?

A When I compiled the schedule.

Q The schedule of what?

A Schedule listing the deposits.

1 jpjw Rubin - direct 62

2 Q Now, prior to the time that you prepared

3 the tape, which is affixed to the yellow page in Govern-

4 ment's Exhibit 6 in evidence, had you previously examined

5 the bank statements supplied to you by Mr. Meyers?

6 A No, I had not.

7 Q Now, as a result of your verification of

8 the bank deposits compiled by the agent, would you tell

9 us what if anything you did at that time?

10 A Well, the agent had raised the question

11 as to the discrepancies between --

12 MR. GALLOP: Object to the witness testifying.

13 THE COURT: Sustained. Strike out the

14 witness' answer.

15 The jury will disregard.

16 Reframe the question.

17 Q Mr. Rubin, without telling us what if any-

18 thing the agent said to you, please tell us what if

19 anything you did as a result of your verification of the

20 adding machine tape prepared in connection with the

21 bank deposits?

22 A Well, I stepped out of the room and I called

23 Mr. Meyers on the telephone.

24 Q Where did you call him?

25 A He was at work at the New York Stock Exchange.

1 jpjw

Rubin - direct

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2 Q Did you speak with Mr. Meyers at that time?

3 A I did.

4 Q Tell us as best you can recall what if
5 anything you said and what if anything Mr. Meyers said
6 in that phone conversation.7 A Well, I had advised him that we had totaled
8 the bank statements, totaled the deposits that were in
9 the bank statements that it totaled over \$160,000 and the
10 agent had found a discrepancy between the amounts
11 reported on the Schedule C and the amounts which were
12 deposited in that account.13 I asked Mr. Meyers if he knew the source
14 of the difference, what the difference was.15 Q What if anything did Mr. Meyers say at
16 that time?17 A He told me at that time that the income or
18 the deposits, the additional deposits came from certain
19 monies that he had taken into his possession in connection
20 with his father who was in Florida and who was ailing
21 and he was disbursing the funds on behalf of his father
22 as necessary.23 Also, there were certain investments in
24 connection with his children's account which he had closed
25 out and he had taken those funds into his checking account.

jpjw

Rubin - direct

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Q Now, did there come a time when you personally saw Mr. Meyers on the day of the audit?

A Yes.

Q Would you tell us where you saw Mr. Meyers?

A Yes. I had returned to the room with the agent and we were going over various other items and there was a knock at the door and my secretary opened the door and Mr. Meyers entered.

Q Tell us what if anything happened at the time Mr. Meyers came into the room.

A Mr. Meyers stated that he wanted to clarify certain of the things that he had told me on the telephone and he proceeded to tell the agent that was there the same thing in substance that he had told me on the telephone.

Q Tell us as best you can recall what Mr. Meyers said at that time.

MR. GALLOP: Excuse me, can you establish if Mr. Rubin was present at all times during this examination?

THE COURT: Yes. Only tell what you were present to hear. Fine out if he was there.

Q Mr. Rubin, when Mr. Meyers came into your office, were you present?

1 jpjw

Rubin - direct

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2 A Yes.

3 Q Did you remain there thereafter in Mr.
4 Meyers presence?

5 A Yes, I did.

6 Q Tell us, as best you can recall, what
7 if anything Mr. Meyers said at the time that he came
8 into your presence in your office in the presence of the
9 agent.

10 A He indicated that the additional deposits
11 related to closing out of certain investment accounts
12 that he had on behalf of his children, as well as certain
13 funds that he had taken into his possession, which were
14 his father's and he was disbursing them on behalf of his
15 father.

16 Q Now, what if anything did you say to Mr.
17 Meyers at that time?

18 A I said we will need some documentation to
19 support that. That was about it.

20 Q Did Mr. Meyers remain after that conver-
21 sation?

22 A No, he left after that.

23 THE COURT: I think at this point I will
24 recess for the luncheon recess.

25 Members of the jury, keep an open mind

1 jpjw Rubin - direct 66-67
2 and don't discuss the case. Return to the jury room
3 at 2:00 o'clock. You may now withdraw from the
4 courtroom.

5 (Jury left the courtroom)

6 THE COURT: Mr. Rubin, you can step down
7 and return at 2:00 o'clock.

8 All right. We will be in recess at this
9 time.

10 (Luncheon recess)

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(In open court - jury not present)

MR. JOSSEN: We have a witness who is here from Puerto Rico who we believe is likely to invoke his privilege when he is called by the government.

We are prepared to grant him immunity.

I would like at this time if the Court would be prepared to do that, to call him to ask him a question or two to see if he will invoke his privilege and if so, to prepare an immunity form for your signature.

THE COURT: Don't you usually take those to Part I?

MR. JOSSEN: Not in the course of the trial.

THE COURT: Can't you ask him. He ought to tell you if he will take his privilege.

MR. BRODSKY: William Brodsky, 475 Fifth Avenue.

He has asserted his privilege in this case, your Honor.

THE COURT: Prepare a statement.

MR. JOSSEN: I will and present it to you first thing in the afternoon.

JPjw

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A F T E R N O O N S E S S I O N

2:00 P.M.

(In open court - jury not present)

MR. JOSSEN: Your Honor, if I might, I would like to hand up to the Court an immunity order concerning Marcelino Fernandez, whom the government intends to call.

THE COURT: Have you shown it to Mr. Brodsky?

MR. BRODSKY: I have not seen it, your Honor.

Your Honor, there is only one further matter with respect to this order. Mr. Jossen has asked for certain documents that Mr. Fernandez has, personal documents of his, some letters.

THE COURT: That's information, isn't it?

MR. BRODSKY: Yes, your Honor. That is required to be produced. I would only -- Mr. Jossen has asked those to be produced prior to Mr. Fernandez getting on the witness stand actually.

THE COURT: The immunity will extend to the documents too.

MR. BRODSKY: As long as that is clear.

1 jpjw

2 THE COURT: As long as a document is
3 classified as information.

4 I will change Paragraph 2 that the attorney
5 for Mr. Fernandez has advised the Court that he has refused
6 it.

7 Bring in the jury, please.

8 (In open court - jury present)

9 THE COURT: Mr. Rubin may resume the stand.
10 Good afternoon, members of the jury.

11
12 M I C H A E L R U B I N , resumed.

13 MR. JOSSEN: May I proceed, your Honor?

14 THE COURT: Please resume.

15 DIRECT EXAMINATION CONTINUED

16 BY MR. JOSSEN:

17 Q Mr. Rubin, after the time that Mr. Meyers
18 left your office during the audit in connection with the
19 1972 income tax return, did you have occasion to speak
20 to Mr. Meyers again?

21 A Yes, I did.

22 Q Can you tell us as best you can recall when
23 you spoke with him for the next time?

24 A It was several days, maybe several weeks
25 after that. I would say a week, maybe two weeks after

1 jpjw

Rubin - direct

71

2 that I received a telephone call from Mr. Meyers.

3 Q Where did you receive this phone call?

4 A At Ernst & Ernst.

5 Q Did you speak with Mr. Meyers at that time?

6 A I did.

7 Q Tell us as best you can recall what if
8 anything Mr. Meyers said to you and what if anything you
9 said to him at that time.

10 A Mr. Meyers indicated that he was having
11 some difficulty in locating when and where the proceeds
12 from his father's account or his children's accounts
13 came into his checking account during the year. He
14 wanted to look at his information and come to my office
15 and pick it up so that it would help him to determine
16 when and where the cash came into his checking account.

17 Q Now, were the documents which Mr. Meyers
18 had supplied to you at the commencement of the time that
19 you started to prepare his 1972 tax return in the Ernst
20 & Ernst files at that time?

21 A Yes, they were.

22 Q Had you maintained them in those files
23 from the time that Mr. Meyers had first given them to you?

24 A Yes, I did.

25 Q Now, do you recall when the audit meeting

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Rubin - direct

72

took place?

A It was in the fall of 1973.

Q Do you recall what month?

A It was in November.

Q Now, as a result of your phone --withdrawn.

Following your phone conversation with
Mr. Meyers, did there come a time when you saw Mr. Meyers?

A Yes.

Q When was that?

A I would say sometime after that telephone
conversation, the same day.

Q Where did you next see Mr. Meyers?

A He came to my office.

Q Tell us what if anything happened at that
time.

A He said he wanted to look at the information
that he had given to me in preparing the tax return and
he would take -- he wanted to take it with him and go
over it.

Q Did Mr. Meyers take the material with him
at that time?

A Yes, he did.

Q From what year?

A 1972.

1 jpjw Rubin - direct 73

2 Q Can you describe for us, if you recall,
3 how Mr. Meyers took that material?

4 A Yes. He just picked it up and like more
5 or less in a grabbing nature.

6 Q Did you speak with Mr. Meyers again after
7 this occasion when Mr. Meyers took the materials back
8 from you?

9 A Yes, I did.

10 Q When did you speak with him for the next
11 time?

12 A Maybe a day or two after that.

13 Q And in what manner did you speak with Mr.
14 Meyers at that time?

15 A I had called Mr. Meyers to obtain his
16 permission to release by his attorney the information
17 that he had submitted to Ernst & Ernst to prepare the 1970
18 and 1971 tax returns.

19 Q Now, had you examined that information
20 prior to the time that you called Mr. Meyers?

21 A No, I had not.

22 Q Tell us what if anything -- did Mr. Meyers
23 give you his consent at that time?

24 A Yes, he did.

25 Q Now, as a result of that consent from Mr.

1 jpjw

Rubin - direct

74

2 Meyers, what if anything did you do with respect to the
3 1971 materials?

4 A Well, I obtained the information from the
5 files and put it together and had it sent to Mr. Meyer's
6 attorney.

7 Q Do you recall when that was done in relation
8 to the time that you obtained Mr. Meyers' consent?

9 A Immediately thereafter.

10 Q Now, at the time that you returned the
11 1972 materials to Mr. Meyers, did you make any photo-
12 static copies of any of the materials that you returned
13 to Mr. Meyers?

14 A No, I did not.

15 Q At the time that you returned the materials
16 for 1970 and 1971, did you make any photostatic copies
17 of any of the materials?

18 A Yes, I did.

19 Q Can you tell us what materials you made
20 copies of, if you recall?

21 A Yes. I photocopied a tape that was attached
22 to some of the material that Mr. Meyers had given to Ernst
23 & Ernst for the 1971 tax return.

24 Q Do you recall what that tape appeared to
25 have to do with?

1 jpw Rubin - direct 75

2 A Yes. It appeared to have to do with the
3 gross receipts, his earnings for 1971.

4 Q I show you what has previously been marked
5 as Government's Exhibit 4-A for identification and ask if
6 you can identify that document?

7 A Yes, I can.

8 Q Would you tell us what Government Exhibit
9 4-A for identification is?

10 A This was the tape that I photocopied which
11 was part of the information that I returned to Mr. Meyers
12 concerning his 1971 income tax return.

13 Q What did you do with this photocopy, Govern-
14 ment Exhibit 4-A after you made it?

15 A I put it in the files, I assume.

16 0 The Ernst & Ernst files?

17 A Yes.

18 MR. JOSSEN: I offer 4-A.

19 MR. GALLOP: No objection.

20 THE COURT: Received in evidence.

21 (Government Exhibit 4-A received

22 in evidence)

23 Q Mr. Rubin, at the two times that you
24 returned materials to Mr. Meyers, first in connection
25 with the 1972 return and then in connection with the 1970

1 jpjw Rubin - direct 76
2 and '71 returns, did you return to Mr. Meyers copies of
3 your own or another accountant's work papers?

4 A No, I did not.

5 Q Were those work papers retained in the
6 Ernst & Ernst files?

7 A Yes.

8 MR. JOSSEN: May I have just a moment,
9 your Honor?

10 (Pause)

11 Q Mr. Rubin, I show you what we have marked
12 as Government Exhibits 19 and 20 for identification, and
13 I ask you whether you had ever seen either of these two
14 exhibits or documents contained therein at the time that
15 you prepared Mr. Meyers 1972 income tax return?

16 A No, I have never seen them before.

17 Q I place before you what we have previously
18 marked as Government's Exhibits 21 and 22 for identifica-
19 tion and I ask you whether you have ever seen the documents
20 contained in either of these exhibits in connection with
21 the preparation of Mr. Meyers 1972 income tax return?

22 A I have never seen them before.

23 Q In connection with that return, is that
24 correct?

25 A That is correct.

1 jpjw Rubin - direct/cross 77

2 MR. JOSSEN: I have no further questions

3 of the witness, your Honor.

4 MR. GALLOP: Your Honor, I have never seen

5 these documents.

6 THE COURT: I understand. Do you need

7 a recess?

8 MR. GALLOP: No.

9 THE COURT: He has not offered them in

10 evidence as yet.

11 MR. GALLOP: I understand that.

12 (Pause)

13 CROSS EXAMINATION

14 BY MR. GALLOP:

15 Q Mr. Rubin, with regard to the four exhibits

16 just shown to you, just so I understand your testimony,

17 you say these exhibits were in the file of Ernst & Ernst?

18 MR. JOSSEN: Objection, your Honor, that's

19 not the testimony at all.

20 THE COURT: Well, he may be asked whether

21 that is what he said.

22 A Would you repeat the question, please?

23 THE COURT: He is asking you if these

24 papers were in the file of Ernst & Ernst?

25 THE WITNESS: I am not sure.

X_XXXXX

1 jpjw

Rubin - cross

78

2 Q Do you know where these papers were?

3 A No, I've never seen them before in the
4 preparation of the '72 tax return.5 Q I misunderstood you before. I thought you
6 gave some testimony indicating that they were on the
7 premises of Ernst & Ernst. If I am wrong, I stand
8 corrected9 Mr. Rubin, you say you worked for Ernst
10 & Ernst. Can you describe, if you will, for the years
11 '72 and '73, which were the years you were testifying
12 with regard, the size of the accounting firm of Ernst &
13 Ernst?14 A I can do that using estimates. We had
15 approximately, I would say, 25 to 30 individuals in the
16 tax department. We had about 150 people on the audit staff
17 and we had approximately 30 people in connection with
18 management consulting services, plus a staff of secretarial
19 and administrative people.20 Q Now, when you are referring to that, are
21 you referring just to the New York office?

22 A That's correct.

23 Q How many offices did Ernst & Ernst have?

24 A Ernst & Ernst had probably 75 to 100 offices
25 throughout the country.

1	jpjw	Rubin - cross	79
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2 Q Did they have any offices throughout the
3 world?

4	A	They do.
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5 Q Is this one of the largest accounting
6 firms in the United States?

7 A It is considered one of the Big Eight.

8 Q The expression "Big Eight", what does that
9 mean?

10 A The largest accounting firms are considered
11 in the group.

12 Q Is there any particular reason why they
13 are considered in a special group?

14 A They are the largest accounting firms.

15 Q Is it only because of their firm that
16 they have that recognition?

17 A I believe that's true.

18 Q Would you say it is also one of the most
19 prestigious accounting firms?

20 A They also have a reputation for that.

21 Q Do they also represent some of the largest
22 corporations in the world?

23	A	They do.
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24 Q Isn't it a fact that they represent General
25 Motors?

1 jpjw

Rubin - cross

80

2 A No.

3 MR. JOSSEN: Objection.

4 THE COURT: They can bring out that but
5 not every client. I will allow him to answer the
6 question.

7 A Repeat the question.

8 Q Do they represent General Motors?

9 A I don't believe they do.

10 Q They represent some of the larger corporations?

11 A They do accounting work for them, yes.

12 Q Do they represent any stock brokerage
13 firms?

14 A I believe they do.

15 Q Do they represent member firms of the
16 New York Stock Exchange?

17 A I believe they have.

18 Q What do you understand that to mean by the
19 term "member firms"?

20 A Firms that have seats on the Stock Exchange.

21 Q Do they represent any individuals who own
22 seats on the Stock Exchange?

23 A I know of one.

24 Q Besides Mr. Meyers?

25 A No. Just Mr. Meyers.

jpjw

Rubin - cross

81

Q You don't know of any others?

A Not to my knowledge.

Q With regard to Mr. Meyers, how did you
to be the accountant who was assigned to prepare his
turns?

A I was assigned him. I have no knowledge
I was picked to handle his --

Q How did it come about?

A At the end of 1972, the beginning of 1973,
s are reassigned in the office and Mr. Meyers'
as on a list of clients that I had been assigned.

Q Well, was he a client of the office for
prior year?

A Yes, he was.

Q Did a different accountant handle his
ular work?

A Yes.

Q Do you know of the reason why he didn't
with that particular accountant but was sent to a
accountant, namely yourself?

A No.

Q Is it common practice to move a client from
countant to another?

A Yes.

1 jpjw

Rubin - cross

82

2 Q What was your status in the firm at that
3 time?

4 A I was a member of the tax department and
5 I was classified as a senior on the tax staff.

6 Q And in the pecking order, where would that
7 put you?

8 A Well, there was the staff, in-charge, seniors,
9 supervisors, managers and partners.

10 Q So, you were the second from the bottom?

11 A Third from the bottom, yes.

12 Q Start again, Mr. Rubin. What was the
13 lowest?

14 A The staff.

15 Q Right.

16 A In-charge.

17 Q In-charge is another group?

18 A That's right.

19 Q What is the staff group?

20 A As you come on to the firm, you are considered
21 on the staff and you are promoted accordingly.

22 Q What is the in-charge group?

23 A That's the next level up.

24 Q How long are you usually a member of Ernst
25 & Ernst before you rise to that level?

1 jpjw Rubin - cross 83

2 A Approximately a year.

3 Q And then the next level?

4 A Another year.

5 Q So, you had about two years under your

6 belt, is that correct?

7 A I had about three years under my belt at

8 that time.

9 Q And you were in the senior level?

10 A That's correct.

11 Q And after that you would rise to supervisor?

12 A That's right.

13 Q And after that?

14 A Manager and then partner.

15 Q Now, would you say that Mr. Meyers was one

16 of the more important clients to this firm?

17 A I think all clients are important.

18 Q Well, in terms of the quantity of service

19 that has to be --

20 A No, I would not.

21 Q Would he be the type of client who would

22 be assigned a senior or lower accountant rather than a

23 partner?

24 A That's correct.

25 MR. JOSSEN: Objection, your Honor.

1 jpjw

Rubin - cross

84

2 THE COURT: Overruled.

3 Q Now, did the prior accountant, if you know,
4 rise in stature, was that the reason why maybe Mr. Meyers
5 was shifted to you?

6 A That's right. That's possible, yes.

7 Q I see.

8 Now, when you took on Mr. Meyers as your
9 particular account, were you a certified public accountant
10 at that time?

11 A No, I was not.

12 Q Were you an attorney at that time?

13 A Yes, I was.

14 Q Had you specialized in -- I will withdraw
15 that question.

16 Did you take any courses after you graduated
17 from law school for postgraduate education?

18 A Yes, I did.

19 Q Was that in taxation?

20 A Yes.

21 Q Where was that?

22 A The Graduate Law School at New York University.

23 Q Did you have a degree?

24 A I have not completed the program.

25 Q Was it a program for a degree?

jpjw

Rubin - cross

85

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A Yes.

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Q In what?

4

A In taxation.

5

Q Were you also studying for your CPA at

6

that time?

7

A Yes.

8

Q And in what way were you studying for your

9

certification?

10

A Well, I had an exam coming up in May.

11

Q Was there any formal education that you

12

required?

13

A Yes. You have to complete approximately

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36 hours of accounting courses in an undergraduate

15

program.

16

Q Were you taking those courses?

17

A Well, I had completed that.

18

Q Had you taken those courses?

19

A At Adelphi University.

20

Q Was that when you were in undergraduate

21

school?

22

A That's right.

23

Q When did you graduate Adelphi?

24

A 1966.

25

Q When you commenced with Mr. Meyers as your

jpjw

Rubin - cross

86

1 account, when was the first time you had any contact
2 with him?
3

4 A It was at the preparation of the information
5 for the 1972 tax return.

6 Q And how did you come to contact him?

7 A He contacted me.

8 Q Well, did he contact you prior to you
9 being assigned as the accountant handling his account?

10 A No. I believe the way it worked, a form
11 letter went out to clients advising them of the individual
12 that was handling their account for that year.

13 Q I see. So, he was notified by Ernst &
14 Ernst?

15 A It was a form letter.

16 Q That you would be handling his account
17 and he contacted you, is that correct?

18 A I believe that's correct.

19 Q Now, did you have any discussions with
20 him before you actually physically met with him?

21 A I probably spoke to him on the telephone
22 although I don't recall speaking to him.

23 Q Now, when he contacted you, as best you
24 can recall, what did he say to you?

25 A I don't remember.

jpjw

Rubin - cross

87

Q Well, the first time you met him I believe you testified he brought a group of documents with him; is that correct?

A Yes.

Q How did Mr. Meyers know what to bring to you?

MR. JOSSEN: Objection, your Honor.

THE COURT: Sustained.

Q Did you give Mr. Meyers any instructions with regard to what documents he should bring to your office?

A I have no recollection of my conversation with him.

Q So, as far as you recall, he just showed up with a group of documents; is that correct?

A I don't recall the conversation I had with him on the telephone.

Q Did you make any specific requests from him for any additional documents after that first visit where he dropped off whatever he had with him?

A No.

Q So, as I understand it --

A Excuse me. I do have a recollection of asking him for an additional piece of information concerning

1 jpjw

Rubin - cross

88

2 his partnership income.

3 Q I see. When was that?

4 A During the meeting.

5 Q You say during the meeting?

6 A During the meeting with Mr. Meyers.

7 Q How many meetings did you have with Mr.
8 Meyers?

9 A One meeting.

10 Q So, you had one meeting and then you
11 commenced to prepare the income tax returns?

12 A That's correct.

13 Q And aside from asking him for one additional
14 piece of information concerning his partnership income,
15 did you have any other conversations with him?

16 A In what period of time?

17 Q From the time he brought the documents
18 to your office to the time that you brought the completed
19 returns to his home.20 A I don't have any recollection of any additional
21 communication with him.22 Q So, you based everything upon the documents
23 he dropped off, is that correct?

24 A I believe that's correct, yes.

25 Q Now, can you recall what particular documents

1 jpjw

Rubin - cross

90

2 your Honor?

3 THE COURT: On voir dire?

4 MR. JOSSEN: Yes.

5 THE COURT: If necessary, yes.

6 VOIR DIRE EXAMINATION

7 BY MR. JOSSEN:

8 Q Mr. Rubin, do you recall whether the tapes
9 and checks which are affixed to the various pages of
10 Defendant's Exhibit A were on this exhibit in the fashion
11 that you see now at the time that you first received it
12 from Mr. Meyers?

13 A I recall that there were some checks
14 attached but specifically I don't remember if these
15 were the checks or if these were the specific tapes
16 attached.

17 Q Do you recall if there were tapes attached?

18 A I recall that there were checks and some
19 tapes, yes.

20 MR. JOSSEN: I have no objection.

21 MR. GALLOP: I offer it in evidence.

22 THE COURT: Received in evidence.

23 (Defendant's Exhibit A received
24 in evidence)

25 THE COURT: You may continue.

1 jpjw

Rubin - cross

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2 CROSS EXAMINATION CONTINUED

3 BY MR. GALLOP:

4 Q Mr. Rubin, you say you received some bank
5 statements; is that correct?

6 A I received envelopes which had bank state-
7 ments in them, I guess.

8 Q When you say you guess, you mean you
9 never opened these envelopes?

10 A That's correct.

11 Q For what purpose did you receive the
12 envelopes?

13 A Mr. Meyers asked me to store them.

14 Q Is Ernst & Ernst in the business of storage
15 of records?

16 A We, from time to time, do store records
17 for our clients when we are asked to.

18 Q I guess because they are quite voluminous?

19 MR. JOSSEN: Objection, your Honor.

20 THE COURT: It may be argumentative. He
21 may be asked whether the size or voluminousness is the
22 reason for storing them.

23 Q Was the size of these records the reason
24 for storing them?

25 A I don't know the reason for storing them.

jpjw

Rubin - cross

92

Q Was there a time when you did look at these particular bank statements?

A No.

Q You never looked at them?

A Correct.

Q Didn't you testify on direct examination that you did a total of the bank deposits?

A I'm sorry, that's correct. At the time of the bank examination, I reviewed them with the agent.

Q How did you come to open these envelopes?

A The agent opened them up.

Q You never bothered to open the envelopes and the agent, Mr. Grau, opened them for the first time; is that correct?

A That's correct.

Q Do you know what caused Mr. Grau to open these envelopes?

MR. JOSSEN: Objection.

THE COURT: I don't know what this particular witness can tell you about what possessed the agent to do what he did.

Q When did he open them?

A In my office.

Q When?

1	jpjw
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Rubin - cross

93

2 A In my presence.

3 Q Do you know how he did it?

4 A He asked for the bank statements of Mr.
5 Meyers.

6 Q And you took them out?

7 A I gave them to him, yes.

8 Q Where were they kept?

9 A They were in the file.

10 Q I see they had remained in the file all
11 this time without being touched, is that your testimony?

12 A Yes.

13 MR. GALLOP: I would like these
14 bank statements marked for identification.

15 (Defendant's Exhibit B marked
16 for identification)

17 Q I ask you to examine those bank statements
18 and I ask you if those are the bank statements that you
19 examined with Mr. Grau.

20 A They appear to be but I am not sure.

21 Q Well, perhaps, I can help you.

22 I show you the adding machine tape that
23 you testified to on direct examination and I ask you
24 if you ran that tape from those particular bank statements.

25 THE COURT: Is there any problem with this

1 jpjw

Rubin - cross

94

2 exhibit?

3 MR. JOSSEN: No, your Honor.

4 THE COURT: You want to offer it?

5 MR. GALLOP: Yes.

6 THE COURT: All right, received.

7 (Defendant's Exhibit B received

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8 in evidence)

9 THE COURT: The jury will understand it
10 is the bank statements referred to.11 Q The exhibit that you just looked at, the
12 tape, Mr. Rubin, that exhibit is an exhibit which was
13 compiled by you prior to the audit; is that correct?

14 A No.

15 Q Well, can you explain how these documents
16 got in this particular folder?

17 THE COURT: That's No. 4?

18 MR. GALLOP: That's Government's Exhibit
19 6 in evidence.

20 THE COURT: All right, Exhibit 6.

21 A May I see the folder?

22 Q Yes.

23 A This is the IRS examination folder and I
24 had prepared this to verify the agent's computation of the
25 deposits in Mr. Meyers' checking account.

jpjw

Rubin - cross

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Q When you say you prepared this, you are referring to the top sheet, is that correct?

A I am.

Q But I am asking you, how all of the documents in that folder happened to get into that one particular folder.

A Well, I put them there.

Q When did you put them together?

A Well, I probably physically put these into the folder on the conclusion of the examination on the day that Mr. Grau was there.

We would have been working with various papers and we would have them on the desk and at the conclusion of the examination I would have put them back in the file.

Q Now, the top paper, you say you prepared that when Mr. Grau was in your office?

A I prepared it as soon as he came up with a total and I said I would like to check it. I went through the bank statements at that time and verified his numbers.

Q And that was the same time -- same day that Mr. Meyers came to the office also in response to your phone call?

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jpjw

Rubin - cross

96

A Yes, that's correct.

Q Would you flip that page and go to the next page.

When were those pages prepared?

A These were prepared when I prepared the tax return.

Q How many pages going in succession were those work pages that you prepared when you prepared the tax return?

A There were five here that I used in compiling for the tax return. These three sheets are the sheets I prepared when I had my meeting with Mr. Meyers to get his information for the tax return. And then three more sheets which were my sheets which I used to prepare information for the computer in preparing the tax return. And then the rest is the power of attorney.

Q So, of all the pages, up to the power of attorney, the only one which you testify that you prepared at the time of the audit was this addition of the bank deposits?

A Yes, that's correct.

Q And everything else was prepared at the time that you prepared the tax return?

A Well, the power of attorney was prepared

jpjw

Rubin - cross

98

Q I believe in chronological order?

A That I am not sure about.

Q Well, why don't you look at the dates.

THE COURT: They are in evidence, they speak for themselves whatever order they are in. Let's go on to something else. If they are in chronological order, you may call the jury's attention to that fact.

Q Mr. Rubin, as an attorney and a CPA, isn't it good audit procedure for an accountant to check a client's bank deposits?

A It depends upon what nature the work is being done.

Q Well, in trying to determine a man's income, isn't that almost a basic procedure to look at his bank deposits in his business account?

A That's correct.

Q And yet you failed to do that with regard to the preparation of Mr. Meyers tax return.

A That's correct.

Q And Mr. Grau when he came to see you immediately requested the opportunity to do that?

A I don't recall that he immediately requested it.

Q I will withdraw the question.

jpjw

Rubin - cross

99

Mr. Grau requested the opportunity to check those bank statements?

A Yes, he did.

Q How far along was he into the audit at the time that he made that request?

A I believe that it was --

MR. JOSSEN: Objection, your Honor.

THE COURT: He may be asked that.

A I believe it was sometime in the afternoon.

THE COURT: When did he begin with you?

THE WITNESS: In the morning, I believe.

Q On the first day?

A It was only one day, yes.

Q Now, Mr. Rubin, did you sign the tax returns that you prepared?

A I did.

Q And is this your signature on the tax return as preparer?

A Yes, it is.

Q What steps, other than what you have already testified to did you take to verify Mr. Meyers income for the year 1972?

A None.

Q Now, you say you received a group of

1 jpjw Rubin - cross 100

2 tickets or commission statements which were surrounded
3 by a tape; is that correct?

4 A That's correct.

5 (Defendant's Exhibits C and D
6 marked for identification)

7 Q I show you Exhibit C and ask you if this
8 is the tape which surrounded the particular packet of
9 tickets.

10 A I'm not sure.

11 Q You don't recall?

12 A I'm not sure if that was the tape.

13 Q You don't know?

14 A I don't know.

15 Q I show you the packet of tickets, Defendant's
16 Exhibit C for identification, and ask you if you can
17 identify that.

18 A It looks like it but I don't remember
19 specifically if that was the package he had given to me.

20 Q I see.

21 Did you look at the tape at all at the
22 time that you received it?

23 A Yes, I did.

24 Q Did you remove it from the packet?

25 A No.

jpjw

Rubin - cross

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Q In what manner, if you can, was it around the packet?

A I recall that it was wrapped around this way and I recall that there was a tape wrapped around the whole thing with a rubber band around it.

Q Do you recall whether there was any writing on the tape as it appears on Exhibit C for identification?

A I don't recall.

Q You made no comment except to glance at the bottom figure, is that your testimony?

A That's correct.

Q Is this the way you normally prepare a tax return to determine the gross receipts of an account?

A Well, Mr. Meyers had given me the gross receipts and when a client gives us the gross receipts, we list it as the client has given it to us.

Q I see. In other words, Ernst & Ernst takes every statement the client makes without checking for themselves?

A It depends on what we are doing at the time.

Q Well, is there a question which has some technical aspects as to what a taxpayer's gross receipts are?

1 jpjw

Rubin - cross

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2 A No, there is nothing technical about it.

3 Q In other words, every taxpayer knows what
4 his gross receipts are?

5 MR. JOSSEN: Objection, your Honor.

6 THE COURT: I assume he is being asked
7 to give expert testimony in the field of accountance
8 and tax preparation.

9 I will overrule the objection.

10 A Repeat the question, please.

11 Q Does every taxpayer know what is meant by
12 gross receipts for the purpose of preparing his tax
13 returns?

14 THE COURT: That's a different question.

15 MR. GALLOP: I will put that question to
16 him.17 THE COURT: That is arguable. I will let
18 you ask the first question.19 Q Does a taxpayer know what his tax receipts
20 are?

21 MR. JOSSEN: I object.

22 THE COURT: If he knows, it's a professional
23 question.

24 A Some taxpayers do and some don't.

25 Q Don't you find it necessary to sit down with

1 jpjw

Rubin - cross

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2 the taxpayer to go over his records to help him determine
3 what his gross receipts are?

4 A Each individual case is different.

5 Q I see.

6 You had no such discussion with Mr. Meyers?

7 A Not to my recollection.

8 Q You simply glanced at the red figure and
9 put it on the schedule?

10 A I also recall there was a sheet of paper
11 which listed that number as his gross receipts, in
12 addition to that tape.

13 Q In going through your list of the items
14 that he dropped off, we so far have the bank statements,
15 transaction slips and a diary. I think we also have
16 Exhibit A which is the expense sheet; right?

17 A Yes.

18 Q Do you recall any other items that were
19 delivered to you?

20 A I recall there was a sheet which listed
21 his income but I am not sure.

22 Q You're not sure about that sheet?

23 A That's correct.

24 Q Aside from that sheet, do you have any
25 recollection of any other items?

jpjw

Rubin - cross

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1
2 A No, I have no recollection of any other
3 items.

4 (Defendant's Exhibit E marked
5 for identification)

6 Q I show you Exhibit E marked for identifica-
7 tion and ask you if you can identify that particular
8 document.

9 A Yes, I can.

10 Q What is that?

11 A That is the information that Ernst & Ernst
12 sends to clients in connection with the preparation of
13 their tax return.

14 Q Now, do you recall receiving that from Mr.
15 Meyers?

16 A It is possible but I don't remember.

17 MR. GALLOP: I would like to offer
18 Exhibit E in evidence.

19 MR. JOSSEN: May I be permitted a brief
20 voir dire on this, your Honor?

21 THE COURT: Yes.

22 VOIR DIRE EXAMINATION

23 BY MR. JOSSEN:

24 Q Mr. Rubin, do you recognize this form
25 which is Defendant's Exhibit E?

xxx

xx

1	jpjw	Rubin - cross	105
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2 A Yes.

3 Q To your recollection, is this a one page
4 form or is there more than one page attached to it?

5 A There are more than one page.

6 Q What information is called for in the
7 other pages, if you know?

8 A It asks for items of income and expense
9 and deductions.

10 MR. JOSSEN: I object to it, your Honor.

11 THE COURT: On the grounds that the other
12 pages are not attached?

13 MR. JOSSEN: Yes, your Honor.

14 THE COURT: Hand it to the clerk.

15 I will discuss it with you at the recess.

16 (Defendant's Exhibits F and G marked
17 for identification)

18 BY MR. GALLOP:

19 Q I show you Defendant's Exhibits F and G
20 marked for identification and I ask you if you can
21 identify these two exhibits?

22 A These pages are a page from the 5 and 7
23 of the packet which the other sheet would have been
24 attached to.

25 Q Can you identify those two?

1 jpw

Rubin - cross

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2 A Well, they seem to deal with Mr. Meyers'
3 1972 tax return.

4 Q Well, aren't they forms that are supplied
5 by Ernst & Ernst to the taxpayer where the taxpayer
6 provides you with information to fill out the tax return?

7 A Yes.

8 Q Didn't Mr. Meyers bring them to you at the
9 time he gave you the information to prepare his tax
10 return?

11 A I don't remember.

12 Q You have no recollection?

13 A That's correct.

14 Q On the 1972 tax return, is there reflected
15 in that tax return the items on those two exhibits?

16 MR. JOSSEN: Objection, your Honor.

17 THE COURT: Well --

18 MR. GALLOP: This man prepared this, your
19 Honor.

20 THE COURT: If he has ever seen the papers
21 before he can testify about it. But I don't understand
22 that he has or not. As far as making a comparison which
23 the Court and the jury can make, that's not necessary.

24 I will sustain the objection.

xxxx

25 (Defendant's Exhibits H and I

1 jpjw Rubin - cross 107

2 marked for identification)

3 Q I show you these two exhibits, Mr. Rubin
4 and I ask you if you can identify them.

5 A No, I cannot.

6 Q You have no recollection of ever seeing
7 these in the preparation of the tax return?

8 A That's correct.

9 (Defendant's Exhibit J marked
10 for identification)

xxx

11 Q I show you Exhibit J marked for identifica-
12 tion and ask you if you recollect seeing that.

13 A I don't remember.

14 Q Is this an Ernst & Ernst form?

15 A Yes, it is.

16 Q Is this normally sent to the taxpayer in
17 anticipation of preparing the tax return?

18 A Yes, it is.

19 Q Would a taxpayer normally bring it into
20 you?

21 A Yes.

22 MR. GALLOP: I think it might save some
23 time if I mark all in one group, your Honor.

24 (Defendant's Exhibit K marked for
25 identification)

xxx

jpjw

Rubin - cross

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Q I show you Defendant's Exhibit K, your Honor, which is a group of a number of papers and I ask you if you can identify any of these as papers brought to you by Mr. Meyers.

If you can, please remove them from this particular group.

A These two items I now recall as having been received by me.

MR. GALLOP: Can I mark them K-1 and K-2, your Honor?

THE COURT: All right. Any objection to K-1 and K-2?

MR. JOSSEN: I have never seen them, your Honor.

THE COURT: Take a look at them.

MR. GALLOP: I will give them to you, counsel.

(Defendant's Exhibits K-1 and K-2 marked for identification)

MR. JOSSEN: No objection.

THE COURT: Received in evidence (Defendant's Exhibits K-1 and K-2 received in evidence)

(Defendant's Exhibit L marked

1	jpjw	Rubin - cross	109
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2 for identification)

3 Q I show you this bunch of checks and
4 receipts and ask you if you recall receiving these
5 from Mr. Meyers.

6 A I do not recall.

7 Q Do you have any recollection of receiving
8 any checks from Mr. Meyers?

9 A The only checks I recall receiving were
10 the checks stapled to the sheets of items of expenses
11 and deductions which Mr. Meyers had given to me, and
12 a package of bank statements which I assume had checks
13 and bank statements in them.

14 Q When you say you don't recall, is it possible
15 you don't recall receiving these particular checks?

16 MR. JOSSEN: Objection, your Honor.

17 THE COURT: I will permit the question.

18 Anything is possible.

19 Did you receive some checks other than what
20 is stapled on those expense sheets which have already
21 been received in evidence?

22 THE WITNESS: I received the bank statement
23 envelopes and I assume there were checks inside. But I
24 have received no checks in the nature which you have
25 just shown me.

jpjw

Rubin - cross

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THE COURT: About how thick were these statements?

THE WITNESS: I'm not sure, your Honor.

THE COURT: Go ahead.

Q Mr. Rubin, looking at the tax return in front of you and going to the Schedules A and B form, do you see where it says medical and dental expenses?

A Yes.

Q There is a figure for \$117 for the insurance premium?

A Yes.

Q How did you get that figure to put in the tax return?

A I don't have my work papers here with me.

Q I show you Exhibit 6 in evidence.

Are these your work papers that you are referring to?

A Yes.

Q Those are the work papers you are referring to. Is that what the yes is to?

A Yes, that's right.

Q Where did you get the figure of \$117?

A It must have been on something that was returned to Mr. Meyers.

jpjw

Rubin - cross

111

Q In other words, Mr. Meyers gave you some documentation that permitted you to come to the conclusion that he spent \$117?

A He would have spent a little bit more. He would have spent \$234.

Q And was entitled to one-half?

A That's correct.

Q Now, with regard to the next item, medicine and drugs, a \$669 item.

Where did you get that information from?

A Something Mr. Meyers had given to me.

Q Is this among the items which you have so far identified as items that Mr. Meyers gave to you?

A I believe so.

Q Well, you have identified Exhibit K-1 and K-2 and the bank statement?

A It must have been on something else.

Q Go to the other side of the page. Now, where it says contributions. There is a figure of \$330.

How did you arrive at that figure?

A Based upon something Mr. Meyers had told me or given me in writing.

Q Based upon what you have identified as

1 jpjw Rubin - cross 112

2 having received from Mr. Meyers, is that \$330 item?

3 A No, it is not.

4 Q Did you receive other information from Mr.

5 Meyers with regard to contributions?

6 A I possibly did.

7 Q When you say possible, is there any other

8 way you could have gotten that figure to put on the

9 return?

10 A No, I would have had to tell Mr. Meyers or

11 I couldn't possibly do it.

12 Q Is it your testimony that Mr. Meyers gave

13 you all of these figures?

14 A He would have given me something or orally

15 told me otherwise I wouldn't use it.

16 Q All right. Now, on the next document,

17 the Chase Manhattan return. How did you get that figure?

18 A My notes indicate that that was one of the

19 items that he had given to me at our meeting.

20 Q Is it among the items that you have

21 identified as having received from Mr. Meyers?

22 A Yes.

23 Q Which was that? Is that K-1?

24 A Yes.

25 Q Going now to the schedules, there is the

1 jbjw Rubin - cross 113

2 breakdown of the cash contributions, right? I mean of

3 the cash contributions, the first schedule; do you see

4 that?

5 A Yes.

6 Q How did you come to know that Mr. Meyers

7 gave \$50 to The Flemming Fund?

8 A It would have been something that Mr.

9 Meyers had given me.

10 Q The Visiting Nurse Service, \$25?

11 THE COURT: I don't think any of this is

12 in issue, Mr. Gallop. They don't contend there is any-

13 thing false about that part of the return.

14 MR. GALLOP: I think it is important,

15 your Honor, because all in these documents --

16 THE COURT: He can be asked what papers

17 he had before him and he may describe the papers and

18 tell what he got orally. I am not going through every

19 contribution. It is not necessary and it is a waste of

20 time.

21 Q Going to the next schedule, you have Mr.

22 Meyers business expenses; is that correct, totalling

23 \$37,140, and it is broken down?

24 A Yes.

25 Q How did you get the figures for that

1 jpjw

Rubin - cross

114

2 schedule?

3 A Information Mr. Meyers had submitted to me.

4 Q Is it among the information that you have
5 there?

6 A Well, it is a little complex. I would have
7 to go through it. But, yes, this contains the information --

8 THE COURT: This being what, please?

9 THE WITNESS: This being Defendant's
10 Exhibit A, being the information I had used in compiling
11 my schedules.

12 Q In other words, all that's contained in
13 Exhibit A, you say is what's on this schedule, totaling
14 \$37,000?

15 A I am saying the information I had gotten
16 in Schedule A is what I used to compute the information
17 that's on this schedule.

18 Q I say this schedule totals \$37,000.

19 A I don't know unless I went through it
20 individually.

21 Q Don't you have the figures in front of you?

22 A Yes, I do.

23 Q And you don't know that it totals \$37,000?

24 A I know it totals \$37,000.

25 Q Doesn't this exhibit total \$6,514?

1 jpjw Rubin-- cross 115

2 A It does.

3 Q You must have had other exhibits besides

4 that, Mr. Rubin, isn't that correct?

5 A This first page totals \$6,514.

6 Q Look through the rest of the exhibits and

7 tell us about the totals.

8 A It will take me some time.

9 Q I will give you a pencil and paper, if it

10 will help you.

11 A Fine.

12 The first item --

13 THE COURT: Go ahead.

14 THE WITNESS: The first item that I have

15 here indicates that Item No. 1, No. 2, No. 4 and

16 No. 6 on this schedule is the number which when added

17 together equals NYSE, New York Mercantile expense.

18 THE COURT: You are referring still to

19 Exhibit A?

20 THE WITNESS: Yes, I am.

21 May I make a notation on this?

22 THE COURT: I prefer you not make a notation

23 on exhibits. If you can, make a notation on a piece of

24 paper.

25 THE WITNESS: Most of these numbers, sir,

jpjw

Rubin - cross

116

come from Defendant's Exhibit A.

Q When you say most of them, isn't it a fact that some of the items on the schedule which appears on the tax return are not covered by Exhibit A?

A Yes.

Q Will you enumerate which ones are not covered by Exhibit A?

A Yes.

Q Just call them out, starting from the top.

A I am trying to do that. I think it would be easier if I gave you the ones that were and then by a negative, we would see the ones which are not.

Q All right, do it that way.

A \$7,633, is covered by Schedule A.

The \$1,817 expense, floor errors, is covered by Schedule A.

\$1,675 New York Stock Exchange luncheon dues is covered by Schedule A.

The \$1,245 item, \$100 was covered by Schedule A.

I have a notation in my work papers that \$975 was from gifts and \$170 was from tips. Those two items were not covered by Schedule A.

Q Did you get any other information for that

1 jpjw Rubin - cross 117
2 item?
3 A I assume I did.
4 Q Continue.
5 A The travel and entertainment, \$9,815 comes
6 from Item 9 and Item 12 on Schedule A.
7 The diary, which Mr. Meyers had given me
8 a total for. And an item called 1971 had debt loss of
9 \$990, additional travel.
10 Q Was that on the Schedule A?
11 A No, it is not.
12 Q Did you have additional information for
13 that item?
14 A I assume I did.
15 Q Continue.
16 A Professional publications, \$429. It came
17 from Schedule A. Interest on New York Stock Exchange
18 seat, \$4,050. It came from Schedule A.
19 \$7,633 item came from Schedule A.
20 Q I think you have already given that.
21 A Yes, I have. I am going in order now.
22 The salary item did not. I have no notation
23 here that it relates to Schedule A.
24 Q That's the \$2,375 item?
25 A That's right.

1 JPJW Rubin - cross 119

2 THE COURT: By Schedule A, you mean

3 Exhibit A?

4 MR. GALLOP: Exhibit A, that's correct.

5 I'm sorry.

6 A Let me just verify that.

7 That's correct. Business expense is not

8 on Schedule A, Exhibit A.

9 Q Is the next item office supplies on

10 expense, is it on Schedule A?

11 A No, it is not.

12 Q Where did you get that information from?

13 A On other information that Mr. Meyers had

14 given me.

15 Q The next item is telephone, is that on

16 Schedule A?

17 A No, that represents 75 percent of an expense,

18 a telephone expense and it is not on Schedule A.

19 Q Did you get that from other information that

20 Mr. Meyers supplied to you?

21 A Yes.

22 Q The next item is accounting, \$800.

23 A I could have gotten that from elsewhere.

24 Q Where else could you have gotten that from?

25 A From Ernst & Ernst records.

1 jpjw

Rubin - cross

120

2 Q What does that \$800 represent? Did you
3 hear my question, Mr. Rubin?

4 A Yes, I did.

5 I have it from other information. I don't
6 know what it represents.

7 Q Doesn't that in fact represent what you
8 charged Mr. Meyers in preparing the tax return for the
9 previous year?

10 A I don't know about that.

11 (Defendant's Exhibit M marked for
12 identification)

xxx

13 Q I show you Defendant's Exhibit M marked
14 for identification.

15 A Yes.

16 Q Can you identify that?

17 A Yes. That's the bill that Mr. Meyers
18 received for the preparation of his 1971 tax return.

19 Q And it is marked paid, right?

20 A That's right.

21 Q That refers to the \$ that you couldn't
22 remember, is that correct?

23 A I didn't send him that bill.

24 MR. GALLOP: I offer it in evidence.

25 MR. JOSSEN: Objection, your Honor.

1 jpjw Rubin - cross 121

2 THE COURT: Overruled.

3 (Defendant's Exhibit M received

xxx

4 in evidence)

5 THE COURT: You may continue.

6 Q Mr. Rubin, is this the first time you
7 have testified with regard to the facts in this case?

8 A No.

9 Q Well, starting at the beginning, when was
10 the first time you had given a statement with regard to
11 the facts in this case?

12 THE COURT: Are you talking about giving
13 a statement or testifying?

14 Q Testifying with regard to the facts of this
15 case.

16 A Well, this is the first time I have
17 testified, yes.

18 Q Were you ever put under oath and asked
19 questions and given answers?

20 A Yes.

21 Q When was that?

22 A It was in the fall or spring of 1974, I
23 believe.

24 Q And at that time when you were put under
25 oath, were you asked about the same events with regard

1 jpjw

Rubin - cross

122

2 to today's testimony?

3 A Yes, I was.

4 Q Do you recall what items you then said
5 you used to prepare Mr. Meyers' tax return?

6 THE COURT: Just confront him with his
7 prior testimony.

8 Do you recall being asked this question
9 and giving this answer? Question and answer.

10 MR. GALLOP: I withdraw that question,
11 your Honor.

12 THE COURT: Just read him what he testified
13 to before.

14 MR. GALLOP: I withdraw my question.

15 Q Mr. Rubin, did you discuss your prior
16 testimony which was given in May of 1974 with anyone
17 prior to appearing in court today?

18 A Yes, I did.

19 Q When was that?

20 A In the past two weeks.

21 Q And with who?

22 A The attorney for the government.

23 Q How many times did you discuss the testimony
24 you gave on May 16, 1974 with the government attorney?

25 A Maybe once.

1

Rubin - cross

123

2

Q

3

A

4

Q

5

A

6

Q

8

A

10

Q

12

MR. JOSSEN: Objection, your Honor.

13

THE COURT: I didn't hear the question.

14

Q

16

THE COURT: I will sustain an objection

19

Q

20

A

21

C

22

A

23

C

25

A

1 jpjw

Rubin - cross

124

2 Q You never read it?

3 A No.

4 (Defendant's Exhibit N marked
5 for identification)6 Q Do you recall ever seeing this particular
7 adding machine tape, Mr. Rubin?

8 A Not specifically, no.

9 Q When you say not specifically, what do you
10 mean by that?

11 A I don't recall seeing this particular tape.

12 Q Did you see a tape that is similar to it,
13 is that what you are implying?14 A I have seen a lot of tapes. I don't
15 remember whether I saw this particular tape.16 Q Could this tape have been amongst the tapes
17 that Mr. Meyers delivered to you?

18 MR. JOSSEN: Objection, your Honor.

19 THE COURT: I will sustain the objection
20 as to form. He may be asked whether he recalls that
21 tape as being among the tapes that were ever shown to
22 him.23 Q Do you recall this tape as being amongst
24 the tapes that Mr. Meyers delivered to you?

25 A I do not.

1

Rubin - cross

125

2

Q

You have no recollection?

3

A

That's right.

A

THE COURT: How much longer will you be?

5

MR. GALLOP: Probably around a half hour,

your Honor.

7

THE COURT: We will take a ten minute recess

at this time.

9

Members of the jury, as you are in the jury

room, don't discuss the case.

11

(Jury left the courtroom)

12

THE COURT: Gentlemen, I have reserved

decision as to Exhibits E, F and G. I am prepared to

14

rule on that, if you will tell me what the issue is.

15

Is it just a question of no foundation?

16

MR. JOSSEN: If I might be able to look

at the exhibits for just a second.

18

First of all, I believe the witness has

testified on voir dire that with respect to Defendant's

2

Exhibit E, the document that was sent out was a complete

2

one. It seems to me that it would be improper to receive

2

in evidence anything but the entire document that was

2

actually filed.

2

THE COURT: Where is the balance of the

document?

1 jpjw

Rubin - cross

126

2

MR. GALLOP: Here it is.

3

4

THE COURT: Do they together constitute
the entire document?

5

MR. GALLOP: As far as I know.

6

MR. JOSSEN: Can we ask the witness that?

7

8

THE COURT: You can ask him that right
now.

9

10

What's the answer, Mr. Rubin, is that the
entire document, E, F and G taken together?

11

MR. GALLOP: And J also, your Honor.

12

13

THE WITNESS: There are numbered sheets,
your Honor.

14

15

16

THE COURT: If the document is complete,
I will take it. If it is not, I won't. It's as simple
as that. You can satisfy the Court through the witness.

17

18

THE WITNESS: There would be sheets 2, 3
and 4 that are missing.

19

20

21

MR. GALLOP: I don't know if they would
apply to this particular defendant. He may not have
received them.

22

23

24

MR. JOSSEN: That's the problem. We don't
know if these pages are specifically what Mr. Meyers
supplied.

25

THE COURT: I will sustain it on the grounds

1 jpjw Rubin - cross 127

2 that they are incomplete on their face but if the form
3 letter in blank can be supplied, I will take that too.

4 (Recess)

5 (In open court - jury present)

6 THE COURT: You may resume.

7 CROSS EXAMINATION CONTINUED

8 BY MR. GALLOP:

9 Q In your work papers, Mr. Rubin, there is
10 an item automobile sales tax, \$7,902.54. Do you see
11 that?

12 A Yes.

13 Q Can you tell us where you got the informa-
14 tion for that particular item?

15 A I don't remember.

16 Q I show you Exhibit K for identification and
17 I ask you if that refreshes your recollection?

18 A I don't remember receiving the documents.

19 Q Did you receive any documentation for those
20 figures?

21 A I am sure I did.

22 Q The bottom of that page -- this is your
23 handwriting, I assume, is that correct?

24 A Yes, sir.

25 Q You have a compilation of all the taxes

1 jpjw

Rubin - cross

128

2 and the credits, do you see that?

3 A Yes.

4 Q Can you tell us where you got that
5 information from?

6 A Probably from something that Mr. Meyers
7 had submitted to me.

8 Q I show you Exhibit F for identification
9 and I ask you if that refreshes your recollection?

10 A It is quite possible that this was something--

11 Q Is this the item that Mr. Meyers submitted
12 to you?'

13 A It is quite possible. I don't remember.

14 Q Now, as I understand it, it is your testimony
15 that you never bothered to check the adding machine tape
16 against the bundle of tickets or slips; right?

17 MR. JOSSEN: Objection, your Honor.

18 THE COURT: If the objection is to the
19 form, I will sustain it.

20 MR. JOSSEN: That's correct.

21 A Yes.

22 THE COURT: I think he has already answered
23 the question.

24 Q You say there was a tape around a bundle
25 of tickets; is that correct?

1 jpjw Rubin - cross 129

2 A Yes, sir.

3 Q Can you describe what these tickets were?

4 A I assumed they were transaction slips.

5 I didn't look at them.

6 Q You didn't look at them at all?

7 A No, I didn't go through them.

8 Q Did you ever remove the rubber band from

9 the bundle?

10 A No, I didn't.

11 Q Did you ever remove the tape from the

12 bundle?

13 A No.

14 Q So, is it your testimony that all you

15 did was look at the bundle and see the total on the tape?

16 A Yes.

17 Q And that was the figure you used for the

18 gross receipts?

19 A Well, I had that figure and I recall having

20 had it someplace else also.

21 Q But you don't recall where?

22 A I recall another sheet indicating

23 the gross receipts.

24 Q Now, you described the bank statements.

25 You said they were bundled also?

1 jpjw Rubin - cross 130

2 A Yes, there were envelopes.

3 Q Did you open that bundle at all?

4 A No, I didn't.

5 Q Do you recall any adding machine tape

6 being around that bundle?

7 A I don't remember if there was.

8 Q Can you say with any certainty whether

9 there was not?

10 A I don't remember.

11 Q Was this -- can you describe the size of

12 that particular bundle?

13 A I don't remember how large it was.

14 Q Well, you know the size of bank statements.

15 A There were twelve bank statement envelopes.

16 Q About the size of a brick would you say that

17 bundle was?

18 A Possibly, yes.

19 Q You say the only reason you retained that

20 was because Mr. Meyers asked you to store them for him?

21 A That's correct.

22 Q You never looked at them?

23 A That's correct, until the meeting with the

24 Revenue agent.

25 Q Unitl Mr. Grau looked at them?

1 jpjw Rubin - cross 131

2 A That's right.

3 Q Now, Mr. Rubin, you say when Mr. Meyers

4 came to your office to get the 1972 records and he

5 grabbed them up or grabbing in nature is the expression

6 you used.

7 A Yes, sir.

8 Q Could you be more specific?

9 A Instead of picking things up from the table,

10 he scooped it up in a quick nature.

11 Q And visualizing, if you will, how much

12 was he scooping up, how many papers, two or three or

13 quite a few?

14 A Well, the documents that I had from him.

15 Q All of the documents?

16 A That's right.

17 Q He was able to scoop them up in his

18 two hands?

19 A I may have put it in an envelope for him.

20 (Defendant's Exhibit O marked

21 for identification)

22 Q I show you Exhibit O for identification.

23 Isn't that the envelope you put all the

24 documents in for Mr. Meyers?

25 A It could very well be, yes.

xxx

1 jpjw

Rubin - cross

132

2 MR. JOSSEN: No objection.

3 MR. GALLOP: I offer it.

4 THE COURT: Empty envelope?

5 MR. GALLOP: Yes.

6 THE COURT: Waste of time. It is perfectly
7 lawful for him to scoop up his records and take them
8 with him.

9 All right, I will receive it.

10 (Defendant's Exhibit O received
11 in evidence)

xxx

12 Q Now, did you place the documents in the
13 envelope, Mr. Rubin?

14 A I don't remember.

15 Q Were you present with Mr. Meyers in the
16 office at all times when he took the documents out of the
17 office?

18 A Yes.

19 Q Do you recall in what manner he took them
20 out? Were they in the envelope or were they in the
21 envelope and other documents or were some loose or did
22 he put some in his pockets?

23 A I don't remember specifically. All I
24 remember is that he had taken them in a grabbing type of
25 nature.

jpjw

Rubin - cross

133

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Q Once he took them into his possession,
what did he do with them?

A He left the office.

Q With them in his hands?

A Yes.

Q In other words, he left the office with the
pieces of paper in his hands?

A Well, I don't remember whether he put it
in the briefcase or what. He took the documents and he
left.

Q These tax returns you are referring to,
Mr. Rubin, you say you brought them to Mr. Meyers' home
to be signed?

A No, I said I delivered them to his house.

Q You delivered them to his house?

A Yes.

Q And you delivered them in the month of
March; isn't that correct?

A I believe it was March.

Q Can you tell us why you delivered them to
his house?

A Well, he lived in the area where I had
lived.

Q Isn't that a somewhat unorthodox procedure?

1 jpjw

Rubin - cross

134

2 A Yes.

3 Q Don't you normally mail the returns to the
4 taxpayer with a cover letter?5 A You usually do. You usually send it by
6 mail or by messenger.7 Q But for the accountant himself to bring it
8 for signature, is that somewhat unorthodox?

9 A Yes, it is unusual.

10 Q Is there any reason why you did it in this
11 case?12 A It was on the way home and I saw no reason
13 to drop it off.14 Q Are there any other taxpayers who live
15 in Manhattan that you perform the same service for?

16 A Yes.

17 Q You talked about a photostat of a tape for
18 1971 and you say you photostated that particular tape
19 before you turned over the file.

20 Did you again prepare the files for delivery?

21 A Yes, I did. I believe I did. I believe
22 I did. I'm not sure.23 Q You're not sure whether you did or you
24 didn't?

25 A That's right. I either did them myself or

jpjw

Rubin - cross

135

I had them caused to be prepared for delivery.

Q Do you know how many files you delivered of Mr. Meyers' papers?

A Well, the information for 1970 and 1971.

Q Was that in one envelope, several envelopes, do you have any recollection?

A It was larger than one envelope, I would say.

Q Was it several envelopes?

A I don't remember.

Q Were they bulky envelopes?

A I would say they were larger than a small envelope because it contained two years worth of documents.

Q Was it larger than two of these?

A I don't remember.

Q What else did you photostat from all the documents?

A That's all I recall photostating.

Q You had another year, in other words, you had '71 and you said you had two years. Is that 1970 also?

A That's correct.

Q Did you photostat anything from 1970?

A I don't remember.

jpjw

Rubin - cross

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Q Can you tell us why you picked this one particular item to photostat?

A Yes. The reason was an issue had come up in the Revenue agent's examination in connection with gross receipts. Mr. Meyers had taken from my office all his information in connection with 1972 and at that time I became suspicious of what was going on when he asked for the information to be sent to your office.

I wanted to retain at least something in my files in connection with his 1971 tax returns to support the item of gross receipts that was on the tax return.

Q Did you prepare the 1971 tax return?

A No.

Q Did you discuss this with the person who did prepare the 1971 tax return?

A No.

Q You did it on your own?

A Yes.

Q Now, you say there came a time during the period of the audit where you were representing Mr. Meyers that Mr. Grau was in your office and analyzing the bank statements noticed that there were deposits in excess of his gross receipts; is that correct?

jpjw

Rubin - cross

137

1 A Yes, sir.

2 Q Have you conducted other audits?

3 A Yes, I have.

4 Q Isn't it fairly standard procedure for
5 an auditing agent from the IRS to look at the bank
6 deposits in the business account?

7 A Yes, it is.

8 Q You had never done it for Mr. Meyers?

9 A That's correct.

10 Q Now, when Mr. Grau did it, and you noticed
11 the discrepancies, you then immediately called Mr. Meyers;
12 is that correct?

13 A Well, the agent asked me why was there this
14 amount of money showing his deposits and only this amount
15 showing as receipts on his tax return.

16 I said I didn't know the answer and I would
17 check with the taxpayer.

18 Q When you said you didn't know the answer
19 and you would check with the taxpayer, did you make any
20 attempt prior to calling Mr. Meyers to ascertain the
21 reason?

22 A No.

23 Q Did you look at any of the records that
24 you had in your possession?
25

- 1 jpjw Rubin - cross 138
- 2 A No. All I did was verify his computation
- 3 of the deposits and then I said I would check with Mr.
- 4 Meyers.
- 5 Q And you called Mr. Meyers from the floor
- 6 of the Stock Exchange?
- 7 A Yes.
- 8 Q And he came up to your office; is that
- 9 correct?
- 10 A He came up, yes.
- 11 Q And did you confer with him in private
- 12 before you conferred with him in Mr. Grau's presence?
- 13 A No, I did not.
- 14 Q What did he say to you in Mr. Grau's
- 15 presence?
- 16 A Well, he indicated to Mr. Grau that he
- 17 wanted to clarify what he had told me on the telephone
- 18 and that he repeated in substance what he had told me on
- 19 the telephone, that the additional funds that were put
- 20 in his checking account came from certain investment
- 21 accounts of his children that he had closed out and
- 22 certain assets of his dad that he was disbursing for his
- 23 benefit.
- 24 Q Didn't he give you several explanations?
- 25 A I recall those two explanations.

jpjw

Rubin - cross

139

Q And didn't he say he wasn't sure as to what it was?

A I don't remember whether he was certain or whether he said these two were two of the possible explanations.

Q Didn't Mr. Meyers indicate at that time that he wasn't sure exactly where this money came from?

A I don't recall whether he specifically stated the money came from these two sources or whether it was his belief at that time.

Q I understand that you say he gave two explanations, but did he also say that he was not sure at the moment?

A I don't remember whether he said that or not.

Q Do you recall when you testified in May of 1974 being asked this question and giving this answer: Page 6, Question 48:

"Q And what was his answer to you for understating the gross receipts?

"A At the time the discrepancy arose during the audit, I stepped out of the room which Mr. Grau was in and I called Mr. Meyers by telephone and I explained to him the agent had found a discrepancy between the gross

1 jpjw Rubin - cross 140
2 receipts reported on SCHEDULE C and the gross amount of
3 income that was in his bank statement.

4 "Mr. Meyers told me that he had thought
5 the discrepancy might have come from either investment
6 accounts that belonged to his children which he closed
7 out during that year and then took the proceeds into his
8 own account or there might have been inter-bank transactions
9 between an account which he used to pay errors on the
10 floor of the Exchange with or it might have come from
11 his father's assets which he took into his possession but
12 he wasn't sure at the moment."

13 Do you recall giving that answer?

14 A Yes, I do.

15 Q Now, Mr. Meyers gave you three different
16 explanations as to what it might have been, right?

17 A That's correct.

18 Q And then he said he wasn't sure as to any
19 of it; is that correct?

20 A Well, that's what he believed. He wasn't
21 sure when he said that.

22 Q Well, you answered by saying he wasn't
23 sure at the moment. He stated it, that he wasn't sure
24 at the moment, isn't that correct?

25 A Yes.

1 jpjw

Rubin - cross

141

2 MR. JOSSEN: I object, your Honor.

3 THE COURT: I will overrule it and let
4 the answer stand.5 Q Mr. Rubin, during this period of time and
6 I refer you now to the period of time when you prepared
7 Mr. Meyers return and at the time the audit commenced
8 with Mr. Grau, were you under psychiatric care?

9 A Yes.

10 Q How often were you seeing a psychiatrist?

11 A I'm not sure. It was either three or four
12 times, possibly five times a week.

13 Q What was the nature of your problem?

14 A Well, I had various things that were
15 bothering me and I wanted to straighten them out.16 Q Is it a fair statement to say that you
17 had a desire to put off your work?18 A Well, that was one of the problems that
19 was bothering me.

20 Q Can you describe that particular problem?

21 A Yes. I would leave things to the last
22 minute and I would wait and procrastinate and do things
23 at the last minute and this bothered me.

24 MR. GALLOP: No further questions.

25 THE COURT: Mr. Jossen, you may have

1 jpjw

Rubin - redirect

142

2 redirect examination.

3 MR. JOSSEN: Yes, your Honor, I will be
4 brief.

5 REDIRECT EXAMINATION

XXXX

6 BY MR. JOSSEN:

7 Q Mr. Rubin, do you recall when you were
8 promoted to the position of supervisor at Ernst & Ernst?

9 A It was in I think June of 1975.

10 Q Now, you were asked on cross examination
11 by Mr. Gallop whether you thought it was part of an
12 audit procedure to examine bank statements.

13 Do you recall being asked that question or
14 a question about that subject?

15 A Yes, I do.

16 Q Can you tell us, Mr. Rubin, at the time
17 that you were preparing Mr. Meyers tax return, were you
18 in fact conducting an audit for Mr. Meyers?

19 A No, I was not.

20 Q Is there a difference -- withdrawn.

21 Is there a practice at Ernst & Ernst --
22 withdrawn.

23 Was there a practice at Ernst & Ernst
24 at the time that you prepared Mr. Meyers 1972 tax return
25 with respect to an examination of underlying material

1 jpjw Rubin - redirect 143

2 or data supplied by the client to the accountant in
3 connection with the preparation of the return?

4 MR. GALLOP: Objection, your Honor.

5 THE COURT: I'll take it.

6 A Yes, there was a practice.

7 Q Would you tell us what that practice
8 was?

9 A Well, we would take the information that
10 was supplied to us by our client at face value. And only
11 where we were instructed to do a further verification
12 would we do any further checking.

13 THE COURT: Instructed by whom?

14 THE WITNESS: Instructed by the client.

15 THE COURT: You mean if a set of papers
16 accompanied by a tape was handed to you, you would not
17 look at the underlying papers?

18 THE WITNESS: Well, if that was the only
19 thing that was submitted, we would probably look at it
20 if that's the only piece of information that we would
21 receive.

22 Q Now, you were asked a number of questions
23 on cross examination --

24 THE COURT: You don't have to ask what he
25 was asked. Whatever he was asked, the jury heard, just

1 jpjw

Rubin - redirect

144

2 frame your next question.

3 MR. JOSSEN: Fine, your Honor.

4 Q Mr. Rubin, did you have any discussion
5 with Mr. Meyers at the time that you first met with him
6 with respect to the total gross receipts which he
7 claimed to have earned for the year 1972?

8 A I specifically don't remember having this
9 discussion, no.

10 Q Do you recall whether you went over with
11 Mr. Meyers at the time that he first gave you information
12 the specific figure for the total gross receipts which
13 Mr. Meyers claimed to have received for the year 1972?

14 A I did go over that figure.

15 Q You went over that with Mr. Meyers; is that
16 correct?

17 A Yes, I did.

18 Q Now, Mr. Rubin, at the time that you were
19 present with Revenue Agent Grau in the conduct of the 1972
20 tax return audit, did you have occasion to look at the
21 bank deposit or bank statements?

22 A I did.

23 Q Do you recall whether you saw at that time
24 in the files or in the records as you removed them any
25 adding machine tape with respect to bank deposits?

KG 9a

1 jpw Rubin - redirect 145

2 A I don't remember.

3 Q Do you remember in what condition the
4 bank statements were when you first turned them over to
5 Mr. Grau?

6 A They were in a package which were wrapped
7 up with either rubber band or string.

8 Q Now, Mr. Rubin, when Mr. Meyers came to
9 your office on the day of the audit with Mr. Grau, would
10 you tell us whether he repeated the same explanations
11 that he had given to you over the telephone earlier?

12 A He did.

13 Q To your recollection, did Mr. Meyers appear
14 to you or indicate to you whether he was more certain
15 as to an explanation for the discrepancy at that time
16 than he had been over the telephone?

17 A Well, he prefaced his introduction in the
18 office by saying he wanted to clarify what he had told
19 me. He indicated those were the areas that he believed
20 the additional funds came from.

21 Q Now, at the time that you prepared Mr.
22 Meyers tax return for 1972, did you have any understand -
23 ing as to whether you were to examine Mr. Meyers bank
24 statements?

25 A There was no specific understanding. He had

1 jpw Rubin - redirect/recross 146

2 instructed me to store his information.

3 Q At the time that you prepared Mr. Meyers
4 tax return for 1972, did you have any understanding as
5 to whether you were to go through the commission advices?

6 A No specific understanding.

7 MR. JOSSEN: May I have a moment, your
8 Honor?

9 (Pause)

10 I have no further questions of the witness,
11 your Honor.

12 RECROSS EXAMINATION

XXX

13 BY MR. GALLOP:

14 Q When you advised Mr. Meyers that there was
15 to be an audit of his tax return, did he request that
16 you set up that audit as soon as possible?

17 A He advised me of the fact that there
18 was an examination.

19 Q Did he ask you --

20 A Yes, he asked me to expedite the examination.

21 Q To get it done as quickly as possible; is
22 that correct?

23 A Yes, he did.

24 Q He didn't ask you to stall it or put it
25 off?

1 jpjw Rubin - recross/redirect 147

2 A That's correct.

3 MR. GALLOP: No further questions.

4 MR. JOSSEN: Your Honor, I apologize,

5 there is one line I wanted to go into briefly on redirect.

6 THE COURT: Very briefly, if you will.

7 REDIRECT EXAMINATION

8 BY MR. JOSSEN:

9 Q Mr. Rubin, you described your --

10 THE COURT: Don't summarize prior

11 testimony. Just ask the next question.

12 Q Did the problem which you indicated --

13 withdrawn.

14 The problem about which you testified

15 you had visited a psychiatrist about influence your

16 ability to do you work once you actually started?

17 A No, it did not.

18 MR. JOSSEN: I have no further questions.

19 THE COURT: Anything else for the witness?

20 MR. GALLOP: No further questions.

21 THE COURT: The witness may step down.

22 Who is the next witness?

23 MR. JOSSEN: Government calls James Crumlish.

24 (Witness excused)

25

1	j p j w	148
2	J A M E S P . C R U M L I S H ,	called

3 as a witness by the government, being first
4 duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. JOSSEN:

7 Q Mr. Crumlish, I will ask you to keep your
8 voice up so that everyone in the courtroom can hear your
9 testimony.

10 How are you presently employed, sir?

11 A I am employed as a tax manager with
12 Touche Ross & Company.

13 Q Is Touche Ross & Company a certified public
14 accounting firm in New York?

15 A Yes, it is.

16 Q How long have you been associated with
17 Touche Ross?

18 A Approximately four and a half years.

19 Q Do you hold any professional licenses of
20 any sort?

21 A Yes. I am a certified public accountant.

22 Q How long have you been a certified public
23 accountant?

24 A Since the fall of 1968.

25 Q Would you tell us, Mr. Crumlish, what if

1 jpjw Crumlish - direct 149
2 any requirements you had to satisfy in order to obtain
3 your license as a certified public accountant?

4 A I had to meet the requirements of an
5 undergraduate degree in accounting from St. Johns
6 University and subsequent to that I had to fulfill an
7 experience requirement for the State of New York and
8 then pass a four part examination.

9 Q Would you tell us generally what your
10 responsibilities are at Touche Ross?

11 A I am employed at Touche Ross as a tax
12 manager working for the national director of tax services
13 for the firm.

My responsibilities include research and certain client work, preparing returns, et cetera.

16 Q Now, prior to the time that you started
17 working at Touche Ross, how were you employed?

18 A Immediately previously to being
19 employed by Touche Ross, I was employed by Reynolds
20 Securities as their tax manager and prior to that I was
21 employed by Ernst & Ernst as a tax supervisor.

22 Q Now, how long were you employed at Ernst
23 & Ernst?

24 A Approximately seven years.

25 Q Would you tell us what positions you held

jpjw

Crumlish - direct

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at Ernst & Ernst?

A I began at Ernst & Ernst in 1965 as an audit assistant and progressed through to the position of audit supervisor in the summer of 1970.

In January of 1971 I transferred to the tax department as a tax supervisor. And I held that position until I left in April of '72.

Q Would you please describe for us the nature of your responsibilities at Ernst & Ernst?

A As a tax supervisor?

Q Yes.

A My responsibilities included preparing returns for individual clients and corporations as well as reviewing the provision for federal and state and local income taxes on the financial statements of publicly held companies.

Q Now, prior to the time that you became a tax supervisor, what were your responsibilities at Ernst & Ernst?

A I was engaged on the audit staff, immediately prior to my transfer to the tax department, I was an audit supervisor, engaged in auditing books and records of various companies.

Q Mr. Crumlish, do you know a man by the name

1 jpjw

Crumlish - direct

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2 of Harvey Meyers?

3 A Yes, I do.

4 Q Do you see Mr. Meyers in court today?

5 MR. GALLOP: We will concede identification,

6 A Yes.

7 THE COURT: The record can show that
8 this witness can identify Mr. Meyers.

9 Q Directing your attention to 1972, did
10 there come a time in that year when you had occasion
11 to prepare the 1971 individual tax return for Harvey
12 Meyers?

13 A Yes.

14 Q Do you recall when you started the prepara-
15 tion of that return?

16 A It was in March of '72.

17 Q Now, would you tell us, sir, how you
18 personally came to prepare that return?

19 A Mr. Meyers brought the information necessary
20 to prepare his return to the offices of Ernst & Ernst
21 and came to my office at Ernst & Ernst.

22 Q Do you recall when that was?

23 A The exact date?

24 Q Well, can you tell us approximately if not
25 the exact date?

1 jpjw

Crumlish - direct

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2 A It was sometime in the middle of March,
3 I believe.

4 Q Was Mr. Meyers alone at the time?

5 A Yes, he was.

6 Q Now, do you recall what if anything took
7 place at that meeting between yourself and Mr. Meyers?

8 A Mr. Meyers gave me the material to prepare
9 his income tax return and I believe we went through the
10 material at that time.

11 Q Can you tell us what material or materials
12 Mr. Meyers turned over to you at that time?

13 A I recall that there was a package of
14 commission advices with an adding machine attached --
15 adding machine tape attached and a wide column paper or
16 wide sheets of paper on which there were listed various
17 expense amounts.

18 Q Do you recall whether any other materials
19 were turned over to you by Mr. Meyers at that time?

20 A I don't recall.

21 Q Do you recall whether you were given any
22 bank statements at that time?

23 A I was not given any bank statements.

24 Q Now, did any conversation take place between
25 yourself and Mr. Meyers at that time?

1 jpjw

2 A Yes, I think we went through all of the
3 items on the sheets.

4 Q On which sheets?

5 A And discussed them. On the wide ledger
6 sheets which were listed the expense amounts.

7 Q Did you discuss with Mr. Meyers the commission
8 advices at all or the tape that surrounded it?

9 A I don't recall if I did or not.

10 Q Do you recall any other specific -- withdrawn.

11 Do you recall any conversation with respect
12 to any specific matter on the sheets which listed
13 expenses?

14 A Yes, there was one item, a \$25,000 amount,
15 a bad debt that had been incurred in Mr. Meyers trade.

16 Q Tell us what you recall in the conversation
17 with respect to that item, what was said.

18 A As I recall, we talked about the \$25,000
19 amount and I don't recall if there was any documentation
20 provided at that time. But on a subsequent occasion
21 there was documentation to provide -- or at some time
22 during this time period I did receive documentation
23 indicating that the loan had been made and that the
24 loan had become bad.

25 Q Now, do you recall to whom this money had

1 jpw Crumlish - direct 154

2 been loaned?

3 A Yes.

4 Q Who was that?

5 A Marcelino Fernandez.

6 Q Do you recall learning whether Mr. Fernandez

7 was associated with any company?

8 A Yes. He was associated with a company

9 called Frozens, Inc.

0 Q Do you recall learning where that company

1 was located?

2 A I don't recall.

3 Q Now, did you receive any documentation

4 with respect to whether the loan was still good or not?

5 A Yes. I received a letter indicating that

6 the funds had been lost.

7 Q Do you remember whether you received

8 that letter at the same time you initially met with Mr.

9 Meyers or at some other occasion?

0 A I think it was at a subsequent occasion.

1 Q Now, do you recall whether at any time

2 Mr. Meyers showed to you a check evidencing the loan to

3 Mr. Fernandez?

4 A Yes, he did.

5 Q I show you what we have marked as Government

1 jpjw Crumlish - direct 155
2 Exhibit 9-A for identification and ask if you can
3 identify that exhibit.

4 A Yes. This appears to be the check that
5 was shown to me.

6 Q Now, Mr. Crumlish, at the time that the
7 check which is Government's Exhibit 9-A was shown to you,
8 can you tell us whether all of the writing which appears
9 on the face of the check was there at the time?

10 A My best recollection would be yes.

11 MR. JOSSEN: Government offers 9-A.

12 MR. GALLOP: No objection.

13 THE COURT: Received.

14 (Government's Exhibit 9-A received
15 in evidence)

16 MR. JOSSEN: May I have just a moment,
17 your Honor?

18 (Pause)

19 MR. JOSSEN: Your Honor, if I might announce
20 a stipulation to the jury.

It is stipulated by and between the United States and the defendant, Harvey Meyers, that the original of Government Exhibit 9-A in evidence was in the possession of Harvey Meyers from December 1973 until last Monday when it was turned over to the government at

jpjw

Crumlish - direct

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the request of the government.

Is that correct, Mr. Gallop?

MR. GALLOP: Yes.

THE COURT: So stipulated.

Members of the jury, you can regard the stipulation with the same effect as if someone had testified to that effect.

Go ahead.

Q Mr. Crumlish, following your meeting with Mr. Meyers, tell us what if anything you did with respect to the preparation of the 1971 tax return form for Mr. Meyers.

A I took the information that he had given me and as I recall, I compared the commission advices to the adding machine tape that had been supplied.

I went through the expense sheets or the schedules listing expense items and made various combinations on them, and then proceeded to complete the return.

Q Would you tell us exactly where you put these figures?

A I don't think I understand the question.

Q Let me withdraw that and ask you another one.

After you went through the materials and analyzed these figures, can you tell us exactly where you

1 jpjw

Crumlish - direct

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2 placed the figures that you concluded were proper?

3 A On blank forms of the Form 1040 for 1971.

4 Q I show you what we have marked as Govern-
5 ment Exhibit 3 for identification and ask you if you can
6 identify that exhibit.

7 A Yes. This is an Ernst & Ernst New York
8 tax department file.

9 Q Can you tell us for what year and what
10 client that file exists for?

11 A It is for 1971 and the client is Harvey
12 Meyers.

13 Q Would you please take a look at the
14 materials in Government's Exhibit 3 for identification
15 and tell us whether you are familiar with the materials
16 contained in that exhibit?

17 A You want me to go through these items?

18 Q Please go through them and look at them
19 yourself.

20 A Yes. These are blank forms of the 1040
21 and state and local returns, as well as computer input
22 sheets for processing the return and getting them into
23 a typed format. On the top it is a completed return.

24 Q Now, please take a look at what we have
25 marked as Government's Exhibit 3-A for identification.

1 jpjw Crumlish - direct 158
2 Do you recognize your handwriting on that
3 exhibit?

4 A Yes. This is my handwriting.

5 Q Could you tell us what Government Exhibit
6 3-A for identification is?

7 A Yes. The item is the Form 1040 U.S.
8 Individual Income Tax for the year 1971. The top page
9 is page 1 and the it goes on through various schedules.

10 Q Can you tell us when you had occasion to
11 place figures on Government's Exhibit 3-A for identifica-
12 tion?

13 A I believe sometime in the month of March
14 of 1972.

15 Q Was that in connection with the preparation
16 of Mr. Meyers' return?

17 A Yes, it was.

18 MR. JOSSEN: I offer Government Exhibit 3.

19 MR. GALLOP: No objection.

20 THE COURT: Received.

21 (Government Exhibit 3 received

22 in evidence)

23 Q Mr. Crumlish, with respect to line 1 of the
24 penciled Schedule C which is a part of Government Exhibit
25 3-A in evidence, can you tell us where you obtained or

1 jpjw Crumlish - direct 159
2 from where you obtained the figure for gross receipts
3 which appears on that line?

4 A That amount would have come from the adding
5 machine tape that was supplied to me.

6 Q Did you do anything to verify that amount
7 at that time?

8 A Previous to putting the number on this
9 page, what I had done was to compare the commission
10 advices to the tape.

11 Q Now, did you compare each individual
12 commission advice which had been supplied to you as
13 against the tape?

14	A	Yes.
----	---	------

15 Q Can you tell us what the results of that
16 comparison were?

17 A I found no discrepancies.

18 Q Were there any commission advices left
19 over at the time?

20 A No, there were not.

21 Q Was there one or more tapes with respect to
22 the total gross receipts?

23 A There was one tape, just one tape and at
24 the bottom it had total commission income.

25 Q Mr. Crumlish, I show you what we have marked

1 jpjw Crumlish - direct 160
2 as Government's Exhibit 4 for identification and I ask
3 you if you can identify that tape.

4 A Yes, I believe this is the tape that
5 was with the commission advices.

6 Q Directing your attention to the bottom of
7 Government Exhibit 4 for identification, can you tell
8 us whether the writing was on that tape at the time that
9 it was given to you?

10 A Yes, I believe it was.

11 MR. JOSSEN: I offer Government Exhibit 4.

12 MR. GALLOP: No objection.

13 THE COURT: Received.

14 (Government Exhibit 4 received
15 in evidence)

16 MR. JOSSEN: Your Honor, if I might
17 announce another stipulation to the jury.

18 It is stipulated by and between the United
19 States and the defendant, Harvey Meyers that the original
20 of Government Exhibit 4 in evidence was in the possession
21 of Harvey Meyers from December of 1973 until last Monday,
22 when it was turned over to the government at the govern-
23 ment's request.

24 Is that correct, Mr. Gallop?

25 MR. GALLOP: Yes.

xxx

1

Crumlish - direct

161

2

THE COURT: So stipulated.

3

When you reach a convenient stopping point,

4

I will break for the day.

5

MR. JOSSEN: Your Honor, I think this

6

would be as convenient as any other.

7

THE COURT: Members of the jury, we will

8

resume the trial at 10:00 o'clock tomorrow. Please

9

assemble in the jury room behind the courtroom at that

10

time.

11

In the meantime, keep an open mind and

12

don't discuss the case. You are now excused for the

13

day.

14

(Jury left the courtroom)

15

THE COURT: All right, gentlemen, I will

16

see you all in the morning.

17

(Adjourned to May 3, 1977 at

18

10:00 o'clock a.m.)

19

20

endday

23

22

2

24

2

JPjw

UNITED STATES OF AMERICA

v.

77 Cr. 227
(CLB)

HARVEY S. MEYERS

May 3, 1977
10:00 A.M.

Trial Resumed

(In open court - jury present)

THE COURT: Good morning members of the
jury.

All right, you may continue.

JAMES CRUMBLISH, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. JOSSEN:

Q Mr. Crumlish, in the materials that you received from Mr. Meyers when he first gave materials to you in 1972, did you get any bank statements from him?

A No, I did not.

Q Now, Mr. Crumlish, with reference to Government Exhibit 3-A in evidence, directing your attention to the page which appears Schedule C, please look at line No. 1 and tell us where you obtained the figure from which appears on line No. 1.

jpjw

Crumlish - direct

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1 A I obtained the figure on line No. 1 from
2 an adding machine tape that was submitted to me, along
3 with commission advices.

4 Q So that we are clear, did you obtain that
5 figure from Government Exhibit 4 in evidence?

6 A Yes. We rounded it off to the whole dollar.

7 Q Now, you told us yesterday that you had
8 compared the commission advices to the tape which is
9 Government's Exhibit 4 in evidence.

10 Would you tell us specifically how you
11 made that comparison?

12 A I took the commission advices and laid
13 them to one side. I took this tape and I compared the
14 commission advice with the amount on the tape.

15 Q Did you do that with respect to each
16 commission advice that had been given to you?

17 A Yes.

18 Q Now, prior to the time that you actually
19 made that comparison, tell us what if anything you did
20 to obtain the commission advices from the materials that
21 had been given to you by Mr. Meyers?

22 A Well, I took the commission advices. I
23 believe this tape was attached to the commission advices
24 and I took the whole package out and took all the commission
25

1	jpjw	Crumlish - direct	164
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2 | advices. I laid the tape down and then compared the

3 advices with the tape.

4 THE COURT: When did you do this?

5 THE WITNESS: Excuse me?

6 THE COURT: When?

7 THE WITNESS: Sometime after the taxpayer
8 had given me the information.

9 Q Did you check -- withdrawn.

10 Did you check all of the documents that
11 had been given to you by Mr. Meyers to find all the
12 commission advices?

13 . A Yes.

14 Q Now, please tell us what if anything you
15 did after you had completed Government Exhibit 3-A in
16 evidence with respect to the preparation of Mr. Meyers
17 1971 tax return.

18 A 3-A is a pencil copy of the Form 1040
19 which had been completed and the tax computed thereon.

20 After completing this I gave it to a Mr.
21 Ditcoff who is a preparer at Ernst & Ernst and he
22 completed some computer input sheet for the purposes of
23 having the return processed by computer.

24 Q Would you tell us, Mr. Crumlish, what a
25 Schedule C is?

1 jpjw

Crumlish - direct

165

2 A Schedule C reports the income or loss from
3 the taxpayer's trade or business.

4 Q Now, did there come a time when you
5 received from Mr. Ditcoff the computer input sheets
6 which he had prepared?

7 A Yes.

8 Q I direct your attention to Government
9 Exhibit 3-B in evidence and I ask you if you can identify
10 that specific document.

11 A Yes. These are the computer input sheets
12 to prepare this return.

13 Q Please tell us what if anything you did
14 with those sheets after you received them from Mr. Ditcoff.

15 A I checked them back to the pencil copy of
16 the return to insure that all of the numbers had been
17 picked up properly.

18 Q Now, after you completed that review,
19 tell us what if anything you did in connection with the
20 preparation of Mr. Meyers tax return.

21 A Well, after reviewing the computer input
22 sheets, they would have been forwarded to somebody to
23 forward them to the computer processing center.

24 Q You told us yesterday that you had a conver-
25 sation with Mr. Meyers about a \$25,000 loan; do you recall

1	jpjw
---	------

Crumlish - direct

166

2 that testimony?

3 A Yes.

Q Did you have any further conversation with
Mr. Meyers with respect to that loan after your initial
meeting with Mr. Meyers?

7 A After our initial meeting, I believe Mr.
8 Meyers gave me some copies of a letter or letters sub-
9 stantiating the loan and that the loan had become bad.

10 Q Now, with respect to Government Exhibit
11 9-A in evidence would you tell us, please, whether that
12 exhibit, that check is in the exact form as you saw it
13 when you were preparing the 1971 income tax return for
14 Mr. Meyers?

15 A My best recollection that it is.

16 Q I now show you what we have marked as
17 Government Exhibit 9 for identification and I will ask
18 you to tell us whether Government Exhibit 9 for identifi-
19 cation is in the exact same form as you observed Govern-
20 ment Exhibit 9-A when you were preparing the 1971 tax
21 return?

22 A Yes. Everything seems to be the same
23 except for the additional notations on 9-A.

24 Q Mr. Crumlish, I place before you what
25 we have marked as Government Exhibits 28, 29 and 30

1 jpjw

Crumlish - direct

167

2 for identification and I ask if you can identify those
3 exhibits.

4 A I believe these are copies of the letters
5 that I did see.

6 Q In connection with what matter?

7 A In connection with the loan, the business
8 debt.

9 MR. GALLOP: Your Honor, if the witness is
10 not sure, I wish he would be more certain otherwise I
11 would object to those items.

12 THE COURT: They haven't been offered.
13 If there is a question about their authenticity, you may
14 have voir dire examination.

15 MR. GALLOP: I don't request that. I
16 withdraw my objection.

17 Q Is it your best recollection that those
18 are the letters that you saw from Mr. Meyers in connection
19 with the \$25,000 loan?

20 A Well, I don't think I saw these particular
21 copies of the letters, but in substance I can say that
22 the words on these letters are in substance what I recall.

23 Q Now, can you tell us what if any tax
24 treatment you gave to the \$25,000 loan in connection
25 with the 1971 income tax return?

jpjw

Crumlish - direct

169

We will show it through other documents.
We still contend even if it had been treated properly
as a business bad debt, it should have been declared
as income next year. That position does not change.

On the question of wilfulness, I submit
the government is clearly entitled to prove that the
defendant submitted altered documents and documents
which he knew were not true.

THE COURT: Well, all right.

MR. GALLOP: Your Honor, while we are
at the bench.

My notes indicate that Exhibit 4 in evidence
is the photostat of the tape and not the original tape.

MR. JOSSEN: 4-A is the original tape.
4 is the copy.

MR. GALLOP: They are both in evidence.

MR. JOSSEN: I believe they both are.

(In open court)

THE COURT: Read back the last question.

(Record read)

A The difference is as a business bad debt,
the amount is deductible in full. As a personal debt,
the amount that would be deducted would be treated as a
short term capital loss deductible against capital gains.

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Crumlish - direct

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jpjw

Crumlish - direct

171

A My best recollection is I may have but I really can't recall.

Q Now, did there come a time when you received from the computer center a final draft of the 1971 tax return for Mr. Meyers?

A Yes. I received the final copy of the return with additional copies.

Q Would you tell us what if anything you did with that return after you received it from the computer center?

A I compared the return to the pencil copy that I had drafted to insure that everything had been reported properly.

Q I show you what we have marked as Government Exhibit 1 for identification and I ask if you can identify that exhibit.

A Yes. This appears to be a copy of the -- the filing copy of the '71 1040 form which I have signed.

Q Does your signature appear on the form?

A Yes, in the lower left-hand column.

MR. JOSSEN: I offer it.

MR. GALLOP: No objection.

THE COURT: Received.

(Government Exhibit 1 received

XXXXXX

jpjw

Crumlish - direct

172

in evidence)

MR. JOSSEN: Your Honor, if I might
announce a stipulation.

It is stipulated by and between the United
States and the defendant, Harvey Meyers, that Government
Exhibit 1 in evidence, the 1971 tax return for Harvey
and Maria Meyers, was filed with the Internal Revenue
Service in or about April of 1972.

THE COURT: Whereabouts?

MR. JOSSEN: Your Honor, that is a matter
that we will discuss a little bit later, if we might.

Q Now, Mr. Crumlish, directing your attention
to Government Exhibit 1 in evidence, will you locate for
us and point out to us precisely where on that exhibit
the \$25,000 deduction for the bad debt is listed?

A It appears on Schedule C for line No. 24.
The caption is employee business expense and there was a
total amount of \$30,000 on that line.

Now, there is also a schedule detailing the
amount of that \$30,000. It is called Statement 2 on this
return. It is entitled Explanation of Expenses, Business
Bad Debt, Funds Loaned for Unsuccessful Co Transaction -
Borrower has left United States. The amount of that is
\$25,000.

1	jpjw
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Crumlish - direct

173

2 There is another amount for legal fees
3 of \$5,000 totaling the \$30,000 that appears on Schedule C.

4 Q Mr. Crumlsh, can you tell us where you
5 received the information that the borrower had left the
6 United States?

7 A From Mr. Meyers.

8 Q Did you receive that information from him
9 in writing or orally?

10 A Orally.

11 Q Do you recall when in connection with the
12 preparation of the return you received that information
13 from Mr. Meyers?

14 A I don't recall precisely, but I believe
15 it was at our second meeting.

16 THE COURT: Where he had gone?

17 THE WITNESS: I have no idea.

18 Q Now, you testified yesterday that you
19 received certain other information from Mr. Meyers when
20 you first met with him in connection with the 1971 tax
21 return.

22 A Yes.

23 Q Let me show you what we have marked as
24 Government Exhibit 7 for identification and I ask if you
25 can identify that exhibit.

1 jpjw

Crumlish - direct

174

2 A Yes. These are the sheets that I had
3 received from Mr. Meyers.

4 Q Now, does your handwriting appear on any
5 place in Government Exhibit 7 for identification?

6 A Yes, it does. It appears in these
7 marginal combinations of items on this page and
8 there are some letters indicating which numbers are
9 being combined.

10 On the second page there are indications
11 of 75 percent. An allocation here. There is a total
12 number. There is a marginal notation which says "Check
13 estimates". There is an indication of \$4,921 Fed, NA
14 or not applicable notation. There are numbers 11,760
15 times 10 percent.

16 Item No. 28 on the third page here is the
17 bad business debt and my handwriting indicates "Trading
18 in Beef Futures" importation from D.R. to P.R. and the
19 amount is \$25,000.

20 At the end of the ink writing, the total,
21 there is my own pencil computation subtracting various
22 amounts from that total.

23 Then at the bottom of this page it says
24 Sam H. Haynes for K & B partnership loss, 123 High Ridge
25 Road, Stanford, Connecticut, 324-4187 and there are some

1 jpjw

Crumlish - direct

175

2 other notations.

3 Q Is that also in your handwriting, the last
4 notation?

5 A Yes.

6 Q Can you tell us, are all your notations on
7 Government Exhibit 7 for identification in pen or in
8 pencil?

9 A They are in pencil.

10 Q Can you tell us whether the tape which is
11 attached to Government Exhibit 7 for identification was
12 on that exhibit at the time that you received it from
13 Mr. Meyers?

14 A I don't recall whether it was attached or
15 not.

16 MR. JOSSEN: I offer Government Exhibit 7.

17 MR. GALLOP: I have no objection, your
18 Honor. I would just like the record to indicate that
19 this particular document was voluntarily turned over to
20 the government for the use by the government.

21 MR. JOSSEN: That was done today.

22 MR. GALLOP: It was turned over previously
23 for their examination.

24 THE COURT: All right, received.

25 (Government Exhibit 7 received

XXXX

1 jpjw

Crumlish - direct

176

2 in evidence)

3 Q Mr. Crumlish, do you recall whether Mr.
4 Meyers had advised you of any other sources of income
5 for himself in the year 1971?

6 A The only other source of income that I
7 recall would be interest income.

8 Q Can you tell us where on Government
9 Exhibit 1 that amount is indicated?

10 THE COURT: That is not in dispute, is it?

11 MR. JOSSEN: I don't believe so, your
12 Honor.

13 THE COURT: Let's stick with the matters
14 that are in controversy. It is not contended that the
15 return is false as to the interest income, so let's go on.

16 Q Now, after you signed the return which is
17 Government Exhibit 1, would you tell us what if anything
18 you did with it?

19 A I forwarded it to Mr. Meyers through the
20 mails.

21 Q Directing your attention to the first page
22 of Government Exhibit 3 in evidence, can you identify
23 that document for us?

24 A Yes. This is the transmittal letter that
25 was used to forward the tax return to Mr. Meyers.

jpjw

Crumlish - direct

177

Q Would you tell us what if any other returns you prepared for Mr. Meyers for the year 1971 beside the federal return?

A Well, in addition to the federal return there was also the 1040ES or estimated tax payments for 1972.

In addition to that there was the New York State individual income tax return as well as the unincorporated business tax return and the same returns, individual income tax return and unincorporated business tax return for the City of New York.

Q Do you recall what fee was charged to Mr. Meyers for the preparation of his 1971 returns?

THE COURT: We had this yesterday, didn't we?

MR. JOSSEN: I believe it was a different year, your Honor.

THE COURT: I don't think so. \$800, wasn't it?

THE WITNESS: Yes.

THE COURT: All right, let's go on.

Q Mr. Crumlish, did you ever meet Mrs. Meyers?

A No, I did not.

Q Did you ever speak with Mrs. Meyers?

1 jpjw

Crumlish - direct

178

2 A No, I did not.

3 Q I show you what we have marked as Govern-
4 ment Exhibits 19 and 21 for identification.

5 Mr. Crumlish, with respect to Government
6 Exhibit 19 first, at any time in connection with the
7 preparation of Mr. Meyers' 1971 tax return, did you see
8 any of the documents contained in that exhibit?

9 A No, I don't believe so.

10 MR. GALLOP: I am going to object to these
11 questions if he is trying to prove a negative.

12 THE COURT: I don't know if he is trying
13 to prove a negative. I will allow it. Which number he
14 never saw?

15 THE WITNESS: 19.

16 Q With respect to Government Exhibit 21 for
17 identification, did you ever see any of the documents
18 contained in that exhibit with respect to the preparation
19 or in connection with the preparation of Mr. Meyers'
20 1971 tax return?

21 A No, I did not.

22 MR. JOSSEN: Your Honor, if I might have
23 just a second?

24 THE COURT: Yes.

25 (Pause)

1 jpjw Crumlsh - direct/cross 179

2 MR. JOSSEN: I have no further questions.

3 CROSS EXAMINATION

XXX

4 BY MR. GALLOP:

5 Q Mr. Crumlsh, you mentioned that you would
6 prepare certain forms for a computer service that you
7 used; do you recall that?

8 A I had reviewed the computer input sheets
9 that were prepared by Mr. Ditcoff, right.

10 Q In other words, there were computer input
11 sheets, right?

12 A Yes.

13 Q You get up this set of sheets on the
14 various taxpayers whose returns you have prepared; is
15 that correct?

16 A In general, yes.

17 Q What do you do with those sheets after
18 they are prepared?

19 A The sheets are forwarded -- well, they are
20 first prepared by a preparer and then they are given
21 back to the person responsible for the return, reviewed
22 to make sure that all of the entires are proper and
23 then forwarded to the computer processing center.

24 Q Where is that?

25 A I don't recall where it was.

jpjw

Crumlish - cross

180

1 Q It's not on the premises of your office?

2 A No, it is not.

3 Q It is sent out somewhere else?

4 A Yes. I think there are two services that
5 we use, either a company called Fast Tax or a company
6 called Computax.
7

8 Q It is a private company that is used on a
9 fee basis by Ernst & Ernst?

10 A That's correct.

11 Q The tax returns come back fully prepared?

12 A Yes.

13 Q So, they are done by the computer?

14 A Well, what's done by the computer is more
15 of the typing on the returns.

16 Q Well, you have an input sheet?

17 A Yes.

18 Q That has all the information that is
19 necessary to prepare all the tax returns that are being
20 prepared by the computer?

21 A I believe that's true, yes.

22 Q And it is sent out to the computer and the
23 completed returns as they were delivered to Mr. Meyers
24 come back?

25 A Yes.

jpjw

Crumlish - cross

181

Q What is the fee that the computer charges for that?

A I think that the fee is probably -- I really don't recall that year. I know this year the fees are about \$100.

Q It was somewhat less than \$100 for the preparation of all those returns by the computer?

A Yes. Well, the manual typing of the returns, yes.

THE COURT: The computer also figures the tax, doesn't it?

THE WITNESS: Yes, it does.

Q It does all the computations that are necessary?

A That's right.

THE COURT: Does it do the estimated tax returns also?

THE WITNESS: Yes.

THE COURT: How does it know what to put on the estimated tax return?

THE WITNESS: This is all submitted on the computer input sheets.

What happens, if I can go a little further. What happens is the computations and the estimates are

1 jpjw Crumlish - cross 182

2 all prepared by hand and then they are sent in to the
3 computer center and then when it comes back, the physical
4 computations or the manual ones that are done are compared
5 to what the computer had done.

6 Q Also, this services gives you last year's
7 sheets to use as a guideline, isn't that correct?

8 A That's true.

9 Q And you just follow the last year's
10 sheets and put in the numbers for the year you are pre-
11 paring, is that correct?

12 A What comes back is what they call pro forma
13 sheets on which would be listed, for example, a number
14 of charities that the taxpayer had given to in the previous
15 year. That is used pretty much as a guide. So the name
16 would already --

17 Q A guide for preparing the following year's
18 return?

19 A Yes.

20 Q You had such sheets when you prepared the
21 '71 return?

22 A Yes.

23 Q Now, showing you Government's Exhibit 3
24 in evidence, are all of your work papers contained in
25 that particular exhibit?

1	jpjw	Crumlish - cross	183
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2 A I believe they are.

3 Q Did you make any notations, any computations
4 or any notes in your work papers when you checked the
5 tape against the individual tickets?

6 A I don't recall that I did, no.

7 Q It was done entirely in your head?

8 A No, I don't know what you mean by "in my
9 head."

10 Q Well, did you write anything on any piece
11 of paper?

12 A No, I did not.

13 Q There is nothing written, everything was
14 maintained in your head; is that correct?

15 A I had the tape on one side and the advices
16 and I just went through it, yes.

17 Q Now, this is the tape that you said you
18 went through item by item?

19 A Right.

20 Q Do you recall specifically doing it?

21 A Yes.

22 Q Do you recall if you were interrupted at
23 any time while you were checking these?

24 A I don't believe I was, no.

25 Q Where did you do it?

1	jpjw	Crumlish - cross	185
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2 A No, I don't believe so.

3 Q No. Well, when you do something like that,
4 isn't it policy to check off each one so there would be
5 some notation as to which you covered and what you did
6 not?

7 A It's not policy.

8 Q I'm not saying policy, I'm just asking if
9 you do it you won't lose track.

10 MR. JOSSEN: Objection.

11 THE COURT: He can answer that question.

12 Q Is it good accounting procedure so you won't
13 make a mistake?

14 A Not necessarily, no.

15 Q Weren't you concerned you might miss one
16 of these because there are almost 150, 200 numbers on
17 here, weren't you concerned you might miss one?

18	A	No.
----	---	-----

19 Q You felt you could follow it without any
20 difficulty?

21 A Yes.

22 Q Is it usual practice when you have such a
23 long set of figures for you not to make any checkmarks?

24 A My own practice, I think, is I don't think
25 I do.

jpjw

Crumlish - cross

186

Q Well, how come on this particular document that only had a few particular numbers, you checked off each particular item?

A Well, I don't know what these checks mean. I think what these checks mean was that they were traced over to one -- either the computer input sheet or something else.

Q You do have a practice of checking off each item as you cover it?

A As I compare it.

Q As you compare it, you check it?

A As I compare it to the computer input sheet.

Q There are only a few items on that sheet but you found it necessary to check each one off?

A I don't know if I found it necessary but I did do it.

Q But you didn't check any of those particular 150 or 200 items?

A That's true.

Q You kept it all in your head.
Ernst & Ernst is one of the Big Eight accounting firms, is that correct?

A Yes, it is.

Q What does that mean?

1 jpjw

Crumlish - cross

187

2 THE COURT: Didn't we have this yesterday?

3 MR. GALLOP: I won't go any further than
4 that.

5 THE COURT: It's cumulative. It is
6 one of the Big Eight accounting firms. It is very
7 prestigious and I think that is conceded, I'm sure.

8 MR. GALLOP: I will withdraw my question.

9 Q Item 28, Mr. Crumlish, you wrote on that
10 item somet-ing in your own handwriting, right?

11 A Yes.

12 Q Will you read that?

13 A "Trading in Beef Future" Importation from
14 D.R. to P.R.

15 Q What does the D.R. mean?

16 A D.R. as I recall is the Dominican Republic.

17 Q And P.R.?

18 A P.R. would be Puerto Rico.

19 Q On your direct examination you gave an
20 explanation as to what appeared on the tax return with
21 regard to that transaction.

22 A Yes.

23 Q Can you turn to the schedule that you read?

24 A Sure.

25 Q Can you read what you read before?

jpjw

Crumlish - cross

183

A Business bad debt - funds loaned for unsuccessful Co. transaction - borrower has left United States.

Q What is unsuccessful Co. transaction mean?

A Well, I think as it was written on the computer input sheets it says unsuccessful commodity trading transaction.

Q Commodity trading transaction?

A Yes.

Q You say you saw some letters. Did those letters indicate that this was a commodity trading transaction?

A I believe they did, yes. Because it said beef, beef importation.

Q Can you explain what a commodity future transaction is?

A Commodity futures transaction would be any type of a commodity in which somebody would purchase the commodity in advance of its being available.

Q What is the future?

A The future is you pay the price now based on a future delivery.

Q Is the future the same as the actual product?

1 jpjw

Crumlish - cross

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2 A Yes.

3 Q In other words, when you buy a beef future,
4 you are actually buying the actual beef?

5 A You are buying beef for delivery i..
6 June or July or something like that. That would be the
7 future.

8 Q But you buy and sell the contract, not the
9 actual product; is that correct?

10 A In the future -- well, you could buy the
11 future contract which would call for delivery.

12 Q And at some time --

13 A If you don't sell that contract, you get
14 delivery of the commodity.

15 Q When you buy a beef future, you don't expect
16 to find one day on your doorstep 1,000 pounds of beef,
17 is that right? These are commodity transactions like
18 a stock transaction; isn't it?

19 A In general the futures contracts that are
20 traded, the person can either take delivery or they can
21 sell out the contract.

22 Q But there is an exchange in New York that
23 trades in these contracts, isn't that correct?

24 A Yes, that's correct.

25 Q They don't actually trade in the product,

jpjw

Crumlish - cross

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just in the contract?

A Yes.

Q Did these letters indicate that there
 trading in the contract or that it was actually a
 a business deal dealing with actual beef?

THE COURT: State the number of the
the record.

MR. GALLOP: 28, 29 and 30 for identifica-

THE WITNESS: You want me to read what

Q Read it to yourself.

A All right.

Q I will restate the question.

Does the letter indicate it was a commodity
dealing in futures or dealing with the
etc?

A It indicates that it is dealing with the product. It is importation of meats from the Cuban Republic.

Q Do you know how you came to put it down on
 et as a futures transaction?

A No. Not as a future transaction.

THE COURT: I don't understand your answer.

jpjw

Crumlish - cross

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THE WITNESS: Not as a future transaction.
I don't know how I got that.

Q Did you use your own discretion?

A No, I did not. I believe that information --

Q I didn't ask you what you believed.

You worked for a brokerage firm or Reynolds
& Company at one time?

A Yes, I did.

Q When did you work for them?

A I worked there from May of 1972 through
September of 1973.

Q That was after you left Ernst & Ernst?

A Yes, it was.

Q Did Ernst & Ernst handle any other people
in the brokerage business, to your knowledge?

A Brokerage firms?

Q Yes.

A I believe the clients were Laird, Bissel &
Meade, Reynolds Securities and Hornblower-Weeks, Hemmil,
Noyes.

Q There were other clients of the firm of
Ernst & Ernst that were also in the trading business, stock
trading business; is that correct?

A Yes.

1 jpjw

Crumlish - cross

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2 Q Now, can you tell us -- you said that you
3 were -- I withdraw that.

4 You said at the time you prepared the
5 tax returns you were an audit supervisor in Ernst & Ernst?

6 A No, I said I was a tax supervisor at Ernst
7 & Ernst.

8 Q A tax supervisor?

9 A Yes, sir.

10 Q What is the distinction between a senior
11 accountant and a tax supervisor?

12 A It is one of responsibility, one of degree.

13 Q I see.

14 A It is a more senior rank than senior.

15 Q What is more senior?

16 A Supervisor.

17 Q What is an audit supervisor?

18 A An audit supervisor is a comparable position
19 to a tax supervisor except that the audit supervisor
20 deals primarily in audit areas.

21 Q When you are in the audit branch, you don't
22 do the tax preparation?

23 A Well, you can. Let me explain it this
24 way: An audit supervisor may be charged with responsibility
25 in addition to performing an audit of the company. He may

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Crumlish - cross

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jpjw

Crumlish - cross

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Q What was it up to the discretion of the individual accountant?

A Yes, I believe so.

Q Where an accountant felt it was a good idea to check, he would check and where he felt it was not necessary, he wouldn't check; is that correct?

A I believe so.

Q You signed the return as preparer, is that correct?

A Yes.

Q Did you feel that you were accepting some sort of responsibility when you signed your name to the tax return?

A Yes.

Q What type of responsibility did you feel you were accepting when you did that?

A The responsibility is that the return had been properly completed.

Q I see. Well, did you sit down with your client, Mr. Meyers, and go over each item and bring to his attention any questions that you might have?

A On the final copy of the return?

Q Yes.

A I don't believe so. I believe that that

1 jpjw Crumlish - cross 195
2 return was mailed to Mr. Meyers.
3 Q Now, you recall receiving this particular
4 exhibit, Government's Exhibit 7 in evidence?
5 A Yes, I do.
6 Q When did you receive this?
7 A At my initial meeting with Mr. Meyers.
8 Q You don't recall receiving this adding
9 machine tape?
10 A I don't recall the tape, no.
11 Q When you say you don't recall it, are you
12 saying that you have a recollection that there was no
13 tape or you just don't recall it?
14 A I am saying I just don't recall.
15 Q So, it is possible that the tape was on?
16 A It is entirely possible.
17 Q Did you ever bother to check this particular
18 tape?
19 A I don't recall.
20 Q Well, this tape totals some \$78,000, a
21 substantial amount of money, right?
22 A Yes.
23 Q What is this particular exhibit that you do
24 recall constitute?
25 A Those are the expenses and deductions.

1 jnjw Crumlish - cross 196

2 Q And these are -- are these almost all the

3 deductions which were taken on the tax return?

4 A I believe so.

5 Q Wasn't it important to check the total of

6 these deductions?

7 A Those numbers on that went to various

8 different captions and they would have been independently

9 totaled.

10 If I may continue.

11 Q Go ahead.

12 A You can see on the last page there, there

13 is a total and from which there are deducted various items

14 coming down to a new total.

15 Q Whose handwriting is the total, \$78,522?

16 A I don't know whose handwriting that is.

17 That was given to me. The pencil numbers are mine.

18 Q So, it was given to you with that total on

19 it?

20 A Yes, it was.

21 Q Now, you checked the total of the tickets?

22 A Yes, sir.

23 Q But you didn't check the total of the

24 \$78,000 in deductions?

25 A I don't believe I said that.

jpjw

Crumlish - cross

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MR. JOSSEN: Objection, your Honor.

THE COURT: He has answered and I will let the answer stand.

Q Mr. Crumlish, you recall you were shown two exhibits, Exhibit 9-A in evidence, a \$25,000 check?

A Yes.

Q And Exhibit 9 for identification, a photostat of that check?

A Yes.

Q I believe you testified that there was a distinction between the two checks, is that correct?

A Yes.

Q What was that distinction?

A There was an additional notation on the original copy of that check.

Q Well, were you testifying -- do you recall simply comparing the two documents place in front of you?

A What I testified was on comparison or comparing those two checks there is a difference. I think I also testified that my best recollection was that I had seen the original check and that appeared to me to be the same check that I saw.

Q Well, obviously, putting them in front of you you could note the distinction?

1 jpjw

Crumlish - cross

193

2 A Yes.

3 Q But you also testified that you recall when
4 you saw the original check that there was not that writing
5 on it; is that correct?

6 MR. JOSSEN: Objection.

7 THE COURT: I will sustain the objection.
8 The jury will recall what he testified to. He may be
9 asked what the facts are on cross examination but not
10 what he testified to.

11 Q When you first saw the original check,
12 is it your testimony that additional writing was not
13 on it?

14 A That the additional writing was not on it?

15 Q Right.

16 A I don't believe so. I think it was complete
17 as it is now.

18 Q Let's find it.

19 When Mr. Meyers showed you the check for
20 \$25,000 --

21 MR. JOSSEN: Could you refer to the exhibit
22 number.

23 Q Exhibit No. 9-A.

24 A Yes.

25 Q It is your testimony that all the writing

1	jpjw	Crumlish - cross	199
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2 on the front of this check was on that check at the
3 time you saw it for the first time?

4 A My best recollection is yes.

5 Q With regard to Exhibit 9-A, prior to coming
6 to court, Mr. Crumlish, when was the last time you saw
7 this check?

8 A Probably law Tuesday, I believe.

9 Q How did you come to see it then?

10 A Mr. Jossen showed it to me.

11 Q Were you asked to compare that check at
12 that time?

13 A I believe I was, yes.

14 Q And did you have any other discussions with
15 Mr. Jossen on any other date except that particular date
16 when you saw that check?

17 A I met with Mr. Jossen on three occasions.
18 The first occasion was two weeks ago this Thursday.
19 The second occasion was on last Tuesday and the last
20 occasion was last Friday.

21 0 You were shown various documents?

22 A Yes.

23 Q You went over your testimony that you
24 gave in court today?

25 A I reviewed some of the testimony, yes.

jpjw

Crumlish - cross

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1
2 Q Were you shown any of your prior statements
3 or testimony?

4 A No, I was not.

5 Q Did you give a prior statement?

6 A I gave a statement to Special Agent Hartnett.
7 in, I believe, the spring or summer of '74. And I spoke
8 with a Mr. Engel prior to my appearance before the grand
9 jury which was on March 4th of this year.

10 Q When you gave the statement to Mr. Hartnett,
11 were you interviewed at that time?

12 A Interviewed by Mr. Hartnett?

13 Q Yes.

14 A Yes.

15 Q Prior to giving the statement, did you
16 have any discussions with him as to what the statement
17 would contain?

18 A No, I did not.

19 Q Did you have any discussions with Mr. Engel
20 prior to your appearing before the grand jury?

21 A Yes, I met with him at one time.

22 Q At that time did you review your prior
23 statement with Mr. Hartnett?

24 A Not at that time. Mr. Engel showed me the
25 interview statement that I had given to Mr. Hartnett --

1 jpjw

Crumlish - cross

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2 well, in the corridor before I entered the grand jury
3 room.

4 Q You reviewed that before you testified?

5 A I looked it over and he just asked me if
6 that was what I said and I said yes.

7 Q You were asked whether that statement was
8 correct. You reviewed it at that time and then you went
9 to the grand jury room?

10 A Yes.

11 Q Subsequent to that you had three further
12 meetings with Mr. Jossen to discuss your testimony?

13 A Right.

14 Q Did you have any other meetings with
15 anybody else representing the government prior to your
16 testifying here today?

17 A Other than Mr. Jossen and Mr. Hartnett
18 who was present at most of these meetings, no.

19 THE COURT: And Mr. Engel?

20 THE WITNESS: And Mr. Engel, yes.

21 Q Do you recall when Mr. Meyers came to your
22 office with the information to prepare his tax return,
23 what other documents if any he brought with him?

24 A My best recollection was that it was the
25 ledger sheet, the commission advices and the adding machine

jpjw

Crumlish - cross

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tape along with the commission advices.

Q So, you are saying the only things you received --

A I am saying that's my best recollection. Those are the things that I remember receiving. I can give you assumptions.

Q Well, let me ask you this question:

Based upon a review of your work papers and the computation or whatever the preparation sheets are for the computer, did you receive any other information from Mr. Meyers so you could complete his tax returns?

A Based on my review, yes, I can say I can assume that I did have other information to prepare that return.

Q Do you know what other information you received?

A Again it is an assumption that I received the checks in support of the various deductions. The reason I say it is an assumption is that I was able to complete various detailed schedules on the Computax or the computer input form listing medical expenses and names of various charities. But I have no recollection of seeing them.

Q If you look at Exhibit 7 in evidence, doesn't

jpjw

Crumlish - cross

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1 this indicat r a number of these items that checks
2 were also provided for you?

3 A Yes, on this --

4 MR. JOSSEN: Objection, your Honor.

5 THE COURT: I will permit him to answer.

6 A These listings do indicate that there are
7 checks, cancelled checks attached. It says "See cancelled
8 checks" on various items.

9 Q Are you familiar with Harvey Meyers'
10 handwriting?

11 A Only his signature.

12 Q Is this in Harvey Meyers' handwriting?

13 A I couldn't tell.

14 THE COURT: This being what?

15 MR. GALLOP: Exhibit 7 in evidence.

16 Q You have no idea?

17 A I could not tell.

18 Q Now, there are items which are included in
19 the tax return which are not covered by Exhibit 7 ; is
20 that correct?

21 A Yes.

22 Q Now, do you recall whether you received
23 any documentation for those items?

24 A As I recall, the other items are the
25

1 jpjw Crumlish - cross 204
2 commission income and the interest income. And I had
3 the documentation for the commissions and I believe I had
4 a 1099 statement for the interest income.

5 MR. GALLOP: May I have these documents
6 marked as one exhibit for identification?

7 (Defendant Exhibit P marked
8 for identification)

xxx

9 Q I ask you to look at Exhibit P, Mr. Crumlish,
10 and if there are any documents which refresh your
11 recollection as to what you received from Mr. Meyers at
12 the time you prepared his tax return, will you please
13 remove them from that packet.

14 THE COURT: Since this may take a few
15 moments, I will excuse the jury at this time and I will
16 direct you, Mr. Crumlish, to finish that task and not talk
17 with anyone during the recess. Just separate these
18 matters into piles. Mr. Gallop can look at the two
19 piles during the recess.

20 Members of the jury, don't discuss the
21 case.

22 (Jury left the courtroom)

23 (Recess)

24 (In open court - jury present)

25

JPJW

Crumlish - cross

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BY MR. GALLOP:

THE COURT: I take it, the witness has separated that exhibit into two different piles?

MR. GALLOP: He separated it into four piles.

THE COURT: May the record show what he has done with it.

MR. GALLOP: I am identifying them now and then I will put it on the record.

(Defendant's Exhibits P-1, 2 and 3 marked for identification)

Q Mr. Crumlish, you broke down Exhibit P for identification into four piles. Perhaps you can explain what each pile represents and as you do, refer to the number on top.

A Okay.

Exhibit P-1 is a form that was used for reporting interest income in the year and I do have a recollection of seeing a document like this.

Item P-2 is a series of checks with adding machine tapes attached. The first one is for medical payments during 1971. I assume that I did see these checks because I was able to take from these checks and record on the computer input sheets the names of the payees

jpjw

Crumlish - cross

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for these medical expenses.

The second batch of checks here are charitable contributions and the same would hold true there. I was able to take the name of the charitable organizations and put them on the computer input sheets.

Item P-3 is a package of commission advices. P-3, I did see something like this, although I don't know if these are the precise ones that I did see or the same amount or what.

Q What does P represent?

A P are the ones I can't identify or have no recollection of seeing it.

Q When you say you can't identify, they may have been included or may not have been included?

A That's right.

Q You just have no present recollection of it?

A That's true.

Q I show you Exhibit 14 for identification. I believe you saw this before, Mr. Crumlish?

A Yes.

Q Did you see this letter at the time that you prepared Mr. Meyers' tax return?

A I don't recall that I did. I don't think I did.

1	jpjw	Crumlish - cross/redirect	207
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2 MR. GALLOP: No further questions.

3 THE COURT: Any redirect, Mr. Jossen?

4 MR. JOSSEN: Just very briefly, your Honor.

5 REDIRECT EXAMINATION

6 BY MR. JOSSEN:

7 Q Mr. Crumlish, with respect to Defendant's
8 Exhibit P-3 for identification, you have not compared those
9 slips to Government Exhibit 4 at this time, have you?

10 A No, I haven't.

11 Q And is it correct that you do not know
12 whether the same number of commission advices which appear
13 in P-3 were given to you at the time that you prepared
14 the return in 1972?

15 A That's right, I do not know that.

16 Q Mr. Crumlish, during the time that you
17 were working on the preparation of Mr. Meyers' 1971
18 tax return, did you have any questions with respect to any
19 of the information which had been supplied to you other
20 than the \$25,000 transaction?

A As I recall, no.

22 THE COURT: By having any questions, did
23 he ask the taxpayer any questions, is that what you are
24 asking him?

25 MR. JOSSEN: Let me rephrase the question.

1 jpjw

Crumlish - redirect

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2 THE COURT: I don't understand the testimony.

3 Q Did you ask Mr. Meyers any questions with
4 respect to any of the material that he had given to you
5 in connection with preparation of the 1971 tax return
6 other than with respect to the \$25,000 loan transaction?

7 A I don't recall.

8 Q Now, can you tell us, sir, the name of the
9 borrower of the \$25,000 for which you took the deduction
10 on the Schedule C for the 1971 tax return, if you recall?

11 A Marcelino Fernandez.

12 MR. JOSSEN: I have no further questions,
13 your Honor.

14 MR. GALLOP: No further questions.

15 THE COURT: You can step down, Mr. Crumlish.

16 (Witness excused)

17 MR. JOSSEN: Government offers Government
18 Exhibit 27 for identification.

19 MR. GALLOP: No objection.

20 THE COURT: Received.

21 (Government Exhibit 27 received

22 in evidence)

23 MR. JOSSEN: With the Court's permission,
24 it is a stipulation and I would like to read it to the
25 jury.

jpjw

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THE COURT: I told you yesterday it is perfectly appropriate to stipulate to facts. Whenever a stipulation of fact has been entered into, you can regard that with the same force and effect as if some witness had taken the oath and testified from the stand as to the matters contained in the stipulation.

You may read the stipulation.

MR. JOSSEN: It is hereby stipulated and agreed by and between the United States of American by Robert J. Jossen, Assistant United States Attorney and Harvey S. Meyers, the defendant, by his attorney Kalman Gallop, that the words "total gross floor income" which appear on the adding machine tape, which is Government Exhibit 4 in evidence, are in the handwriting of the defendant, Harvey S. Meyers.

The stipulation is signed by Robert J. Jossen, by Kalman Gallop and by Harvey Meyers.

Your Honor, with the Court's permission, may I circulate among the jury Government's Exhibit 4 in evidence?

THE COURT: Which year is that claimed to be part of?

MR. JOSSEN: For 1971, your Honor.

In the meantime, can I call the next witness

1 jpjw

2 so we can bring him out.

3 THE COURT: Get him out here so we can
4 get him sworn.

5 MR. JOSSEN: Government calls Juan
6 Cadamartori.

7
8 J U A N C A D A M A R T O R I , called
9 as a witness by the government, being first
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION

XXXX

12 BY MR. JOSSEN:

13 Q Mr. Cadamartori, please keep your voice
14 up so that everyone in the courtroom can hear your testimony.

15 By whom are you employed, sir?

16 A By the Irving Trust Company.

17 Q In what capacity are you employed by the
18 Irving Trust Company?

19 A As a manager.

20 Q Would you tell us generally what your
21 responsibilities are?

22 A I am responsible for the microfilm retrieval
23 area.

24 Q Mr. Cadamartori, can you tell us what if
25 any records are kept by Irving Trust Company on microfilm?

1 jpjw Cadamartori - direct 211

2 A Checks, statements, deposits, various other

3 vital records of the bank.

4 Q Can you tell us are the checks which you

5 microfilmed by the bank in the same condition as they

6 appear as they are actually transacted through the bank?

7 A Yes, sir.

8 Q Mr. Cadamartori, in response to a request

9 from the United States government, did you yesterday

10 perform a search of the microfilm records of the Irving

11 Trust Company with respect to a check issued on the

12 account of Harvey S. Meyers in July of 1971?

13 A Yes, sir.

14 Q I show you what we have marked as Government

15 Exhibit 9 for identification and ask you if you can

16 identify that exhibit?

17 A This is the check that we retrieved yesterday.

18 Q So that it is clear, is Government Exhibit

19 9 for identification in the exact same form as it would

20 have gone through the Irving Trust Company bank at the

21 time that the check was paid by that bank?

22 A Yes, sir.

23 MR. JOSSEN: I offer 9 for identification.

24 MR. GALLOP: May I approach?

25 THE COURT: Yes, sir.

1 jpjw

Cadamartori - direct

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2 (At the side bar)

3 MR. GALLOP: I have no objection to that
4 item going into evidence. I would simply like to point
5 out that we never contested the fact and in fact gave
6 Mr. Jossen similar photostats of the check.

7 THE COURT: I don't know what the significance
8 of pointing that out is. I don't quite understand the
9 relevance.

10 If a paper is admissible, it is admissible.
11 What are you trying to show me?

12 MR. GALLOP: My only point is that the
13 government is putting in this witness and I think the
14 appearance may be that it was an attempt on the part of
15 the defendant not to provide the government with that
16 particular check in the condition as it exists in that
17 photostat and that is not so.

18 MR. JOSSEN: I know that we did receive 9-A
19 from Mr. Gallop. We have had a copy of Government
20 Exhibit 9 but that came from another source to my
21 knowledge.

22 THE COURT: Perhaps I ought to ask Mr.
23 Gallop to state it again so I don't misinterpret your
24 position.

25 What are you trying to do?

1 jpjw Cadamartori - direct 213

2 MR. GALLOP: I think what the government
3 is trying to do is create the inference that we have
4 withheld copies of this check.

5 THE COURT: I don't think he is trying to
6 create that inference at all. The inference is
7 somebody wrote on Exhibit 9 after it passed through the
8 bank.

9 MR. GALLOP: Which has always been conceded.

10 THE COURT: If it is conceded, why do you
11 need this witness for?

12 MR. JOSSEN: I didn't know it was conceded.

13 THE COURT: If there is no objection, I
14 will take it.

15 (In open court)

16 (Government Exhibit 9 received
17 in evidence)

xxx

18 MR. JOSSEN: With the Court's permission,
19 may I circulate Government's 9 and 9-A to the jury and
20 I have no further questions of this witness.

21 THE COURT: Any further questions of this
22 witness?

23 MR. GALLOP: No, your Honor.

24 THE COURT: Fine. You are excused, sir.

25 (Witness excused)

1 jpjw

2 MR. JOSSEN: I will call the next witness,
3 your Honor.

4 Government calls David Hoyt.

5

6 D A V I D H O Y T , called as a witness
7 by the government, being first duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

XXX

10 BY MR. JOSSEN:

11 THE COURT: By whom are you employed, Mr.
12 Hoyt?

13 THE WITNESS: I am employed by the National
14 Securities Clearing Corporation.

15 MR. JOSSEN: Would your Honor prefer me to
16 proceed?

17 THE COURT: I think you can wait. I just
18 asked him where he worked for my own guidance so I could
19 estimate how long his testimony will take.

20 MR. GALLOP: May we approach?

21 THE COURT: Yes.

22 (At the side bar)

23 MR. GALLOP: I believe this witness and
24 another witness will be used for the purpose of introducing
25 certain documents which I will stipulate into evidence.

1 jpjw

Hoyt

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2 THE COURT: Well, if you want to. I didn't
3 want to ask you to do that because I assume it was a
4 critical part of the case. If you want to stipulate to
5 it, that's fine with me. You better discuss it with your
6 client because he seems to be somewhat restless. I
7 noticed him getting up and talking with that spectator
8 attorney back there. You better make sure you know
9 what you are doing so he doesn't express a feeling of
10 annoyance later on.

11 MR. JOSSEN: There is also certain other
12 information I want to ascertain from the witness with
13 respect to background and mechanisms.

14 THE COURT: Don't try facts that aren't
15 in issue. If it is really conceded --

16 MR. JOSSEN: The mechanisms, unless Mr.
17 Gallop will enter into a detailed stipulation about it,
18 I will accept it. If you want to discuss it with me,
19 I will be happy to do that now.

20 THE COURT: The two of you can talk while
21 the jury is looking at the exhibit.

22 (Pause)

23 (In open court)

24

25

1 JPJW

Hoyt - direct

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2 DIRECT EXAMINATION

3 BY MR. JOSSEN:

4 Q Mr. Hoyt, please keep your voice up so
5 everyone in the courtroom can hear your testimony.

6 You indicated to his Honor that you are
7 employed by the National Securities Stock Clearing
8 Corporation.

9 A National Securities Clearing Corporation.

10 Q Are you the officer of any other corporation
11 at this time?

12 A I am.

13 Q Would you tell us the name of that company?

14 A Stock Clearing Corporation.

15 Q Now, prior to the time that you became an
16 officer of the National Securities Clearing Corporation,
17 were you employed by the Stock Clearing Corporation?

18 A I was.

19 Q Directing your attention to the years 1971
20 and 1972, were you employed by the Stock Clearing Corpora-
21 tion at that time?

22 A I was.

23 Q Would you tell us what the functions of the
24 Stock Clearing Corporation were in 1971 and 1972?

25 A The Stock Clearing Corporation is a service

1	ipjw	Hoyt - direct	217
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8 Q During the years 1971 and 1972, did the
9 Stock Clearing Corporation supply any services in connection
10 with the payment of commissions to brokers who are
11 members of the New York Stock Exchange?

12 A Yes.

13 Q What was that service?

14 A The service is a monthly settlement of
15 commissions payable to or payable by members of the New
16 York Stock Exchange.

17 Q Mr. Hoyt, can you explain to the Court and
18 the jury precisely how the commission settlement operated
19 in 1971 and 1972 with respect to the payment of commissions
20 to an individual broker who had a seat on the New York
21 Stock Exchange?

22 A As a result of executions, trade executions
23 that an individual broker may have performed for various
24 firms on the New York Stock Exchange, settlement is
25 necessary in order to pay the broker the amount of money

1 jpw Hoyt - direct 218
2 that is due to him and is payable to him by these other
3 firms.

4 The mechanism that the Stock Clearing
5 Corporation had in '71 and '72 -- 1971 and 1972 -- was
6 such that the broker who expected to get paid, the payee,
7 would submit a billing form which I'll refer to as the
8 debit ticket to the payer, the broker who he expected
9 to pay him. Between the 1st and 5th day of the month
10 of the next month, the month after he had executed the
11 trades. These forms or this form could be submitted
12 through the mails in various ways.

The main object is to get the bill to the payer. The payer then has between the 5th and the 10th day of the month to acknowledge the fact that he owes the money to the payee and by the 10th day of the month, if he acknowledges that he owes the money on the particular bill to the payee, he will send that particular bill with his stamp on it back to the Stock Clearing Corporation accompanied by a form which we call a debit list.

21 The debit list instructs the Stock Clearing
22 Corporation to charge the payer and credit the payee.

On the 15th of the month or as close to the 15th of the month as possible, allowing for non-business days, holidays, a check is made payable to the Stock

1 jpjw Hoyt - direct 219

2 Clearing Corporation payable to the payee and the payer
3 is charged, again by the Stock Clearing Corporation.

4 Q Now, is any other document sent to the
5 payee or the individual broker as you referred to him
6 in connection with or together with the commission check?

7 A Yes, a commission settling statement.

8 Q Can you tell us, if you know, what
9 information is contained on that statement?

10 A Yes. Either the amount due to the broker
11 or the amount due from the broker and a service charge
12 which the Stock Clearing Corporation would charge.

13 Q Now, are any copies of these statements
14 as you call them, retained by the Stock Clearing Corporation
15 or were they in 1971 and 1972?

16 A Yes.

17 Q I show you, Mr. Hoyt, what we have marked
18 as Government Exhibits 19 and 20 for identification, and
19 I ask if you can identify those documents for us.

20 A I can.

21 Q Would you tell us what Government Exhibits
22 19 and 20 for identification are?

23 A These are commission bill settlement state-
24 ments.

25 Q Would you tell us the name of the person who

1 jpjw

Hoyt - direct

220

2 is listed on each of those statements?

3 A Harvey S. Meyers.

4 Q Have you had occasion to check the records
5 of the Stock Clearing Corporation to determine whether
6 Mr. Meyers was a member of the corporation in 1971 and
7 1972?

8 A He was.

9 Q Now, are Government Exhibits 19 and 20 for
10 identification which are before you, records which are
11 kept in the ordinary and regular course of business by
12 the Stock Clearing Corporation?

13 A Yes.

14 Q Was it the regular and ordinary course of
15 business for the Stock Clearing Corporation to keep
16 records such as Government Exhibits 19 and 20 for
17 identification?

18 MR. GALLOP: We have no objection to those
19 documents being admitted.

20 THE COURT: Documents are received,
21 Government's Exhibits 19 and 20.

22 (Government Exhibits 19 and 20
23 received in evidence)

24 Q Mr. Hoyt, so that it is clear, is it correct
25 that the original of each of these Commission bill settle-

xxxx

1 jpjw Hoyt - direct/cross 221
2 ment statements would be sent to the broker together with
3 his check for the month?
4 A Yes.
5 Q Can you tell us, Mr. Hoyt, to your knowledge,
6 sir, did the Stock Clearing Corporation report as a
7 regular practice any of the commissions indicated in
8 Government Exhibits 19 and 20 in evidence or like
9 exhibits to the Internal Revenue Service?
10 A To my knowledge, no.
11 Q To your knowledge, was the Stock Clearing
12 Corporation required to make any reports to the Internal
13 Revenue Service with respect to those commissions?
14 A To my knowledge, no.
15 MR. JOSSEN: I have no further questions
16 of the witness, your Honor.
17 THE COURT: You may cross examine.
18 CROSS EXAMINATION
19 BY MR. GALLOP:
20 Q I have just one question, Mr. Hoyt.
21 Each month, did the broker receive one
22 check or several checks from the Stock Clearing Corporation?
23 A One check
24 MR. GALLOP: Thank you.
25 THE COURT: Anything else from this witness?

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Hoyt

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2 MR. JOSSEN: Nothing further.

3 THE COURT: Mr. Hoyt, you may step down.

4 (Witness excused)

5 MR. JOSSEN: Government calls Marcelino

6	Fernandez.
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7

8 MARCELINO FERNANDEZ,

9 called as a witness by the government, being

10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. JOSSEN:

13 Q Mr. Fernandez, I am going to ask you to
14 keep your voice up so that everyone in the courtroom
15 can hear your testimony.

16 Would you tell us where you reside?

17 A In San Juan, Puerto Rico.

18 Q Mr. Fernandez, do you know a man by the
19 name of Harvey Meyers?

20 A Yes, I do.

21 Q Are you related to Mr. Meyers in any way?

22 A Yes, sir.

23 Q Would you tell us how you are related to
24 Mr. Meyers?

25 A He is my brother-in-law.

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Q Is he married to your sister?

A Yes, sir.

Q Now, Mr. Fernandez, are you testifying here today under an order granting you immunity with respect to your testimony?

A Yes, sir.

Q Would you explain to us what your understanding is with respect to that order granting you immunity?

A That whatever I testify here concerning the documents or evidence or testimony related to this case, will not be held against me.

Is that correct?

Q I am asking you for what your understanding is, Mr. Fernandez.

Do you understand that there is any exception to that what you have just stated was your understanding?

A Yes, sir.

Q Tell us what that exception is.

A That I may not tell any lies or be perjured about it.

Q Mr. Fernandez, how long have you resided in San Juan?

1 jpjw Fernandez - direct 224

2 A About fifteen years, sir.

3 Q Would you tell us how you are presently

4 employed?

5 A Well, I am in a business of my own and I

6 am the president of several corporations, one of them is

7 Frozens, Inc. and another one has my name.

8 Q Please keep your voice up, Mr. Fernandez.

9 I am having difficulty hearing you.

10 THE COURT: Any juror who cannot hear a

11 witness at any time during the trial just raise up your

12 hand and say I can't hear.

13 Q Now, Mr. Fernandez, do you see Harvey

14 Meyers in court today?

15 A Yes, sir.

16 Q Would you point him out, please?

17 MR. GALLOP: We will concede identification.

18 THE COURT: It is conceded that this witness

19 is capable of identifying Mr. Meyers.

20 Q Mr. Fernandez, let me direct your attention

21 to the year 1971.

22 Did there come a time that year when Harvey

23 Meyers gave you some money?

24 A Yes, sir.

25 Q Do you recall how much money Mr. Meyers gave

1 jpjw

Fernandez - direct

225

2 to you?

3 A \$25,000.

4 Q Can you tell us when he gave you that
5 \$25,000?

6 A In July of 1971.

7 Q In what form did you receive that \$25,000?

8 A A check.

9 Q I show you what has already been received
10 in evidence as Government Exhibit 9-A.

11 Does your signature appear on the rear of
12 that check?

13 A Yes, sir.

14 Q Can you tell us, sir, is Government Exhibit
15 9-A in evidence, exactly the same form as it was when
16 you received it from Mr. Meyers?

17 A No, sir.

18 Q I show you what has already been received
19 in evidence as Government Exhibit 9; do you recognize
20 that exhibit?

21 A Yes, sir.

22 Q Is Government Exhibit 9 in the exact form
23 as it was when you received it from Mr. Meyers in 1971?

24 A Yes, sir.

25 Q Mr. Fernandez, please tell us the circumstances

1 jpjw

Fernandez - direct

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2 under which Mr. Meyers came to give you \$25,000?

3 A Well, it had been such a long time. But the
4 exact details, I can't recall. He offered the money as
5 a personal loan and that was it, you know.

6 Q Had you asked Mr. Meyers for that loan?

7 A No, sir.

8 Q Did you need the money at the time?

9 A Not really, no. I could use it, but not
10 really.

11 Q When Mr. Meyers offered you the \$25,000,
12 did you have any understanding as to whether this was to
13 be a favor for you or a favor for Mr. Meyers?

14 A Well, it wasn't a favor for me.

15 Q Did you have any understanding as to whether
16 it was to be a favor for Mr. Meyers?

17 A Yes, it would have been sort of -- he had
18 the money and he offered it to me, but it was not a favor
19 to me.

20 Q Did you understand at the time that Mr.
21 Meyers offered you the \$25,000 that it was a favor for
22 him, for you to take that money from him?

23 A Well, I would assume, yes.

24 Q Is it your best recollection that at the
25 time that Mr. Meyers offered you the \$25,000, that offer

1 jpjv Fernandez - direct 227

2 of the money to you was considered by you as a favor

3 that you were doing for Mr. Meyers?

4 A Yes, sir.

5 Q Was there any understanding at the time

6 that you received this money from Mr. Meyers as to

7 whether interest was to be paid on the \$25,000?

8 A No interest was to be paid.

9 Q That was your understanding between yourself

10 and Mr. Meyers, is that correct?

11 A Yes, but I insisted on paying interest

12 on it.

13 Q I show you what we have marked as Govern-

14 ment Exhibit 14 for identification and ask if you can

15 identify that.

16 A Yes, sir.

17 Q Would you tell us what Government Exhibit

18 14 for identification is?

19 A It is a memorandum that accompanied the

20 check for the \$25,000.

21 Q This is thenote you received along with the

22 check?

23 A Yes, sir.

24 MR. JOSSEN: I offer Government Exhibit 14.

25 MR. GALLOP: No objection.

jpjw

Fernandez - direct

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THE COURT: Received.

(Government Exhibit 14 received

in evidence)

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Q Now, at the time that you received the \$25,000 from Mr. Meyers in July of 1971, did you have any understanding with Mr. Meyers as to whether that money was to be invested by you any place?

A No.

Q Is it correct that at the time you received the \$25,000 from Mr. Meyers, it was just given to you as a personal loan?

A Yes, sir.

Q Tell us, Mr. Fernandez, what you did with the \$25,000 check after you received it from Mr. Meyers.

A I endorsed the check and I deposited it to a corporation, Frozens, Inc.

Q That was your corporation, is that correct?

A I was the major stockholder or sole stockholder -- no, the major stockholder and president of the company, yes.

MR. JOSSEN: Excuse me one moment, your Honor.

(Pause)

Q Now, after you received the check from Mr.

1 jpjw Fernandez - direct 229
2 Meyers, did you acknowledge receipt of that check in
3 any form?

4 A Yes, sir.

Q I show you what we have marked as Govern-
ment Exhibit 15 for identification and I ask you if you
can identify that exhibit.

8 A Yes, sir.

9 Q Would you tell us what Government Exhibit
10 15 for identification is?

11 A It is the acknowledgment of the check for
12 \$25,000.

13 Q Did you prepare that form at or about the
14 same time as the date which appears on that exhibit?

15 A Yes, sir.

16 MR. JOSSEN: I offer Government Exhibit 15.

17 MR. GALLOP: No objection.

18 THE COURT: Received in evidence.

19 (Government Exhibit 15 received

20 in evidence)

21 Q Now, Mr. Fernandez, so that it is clear:

22 At the time that you first got this \$25,000 from Mr. Meyers,
23 is it correct that it was your understanding that Mr. Meyers
24 did not want to receive any interest on the \$25,000?

25 A Yes, sir. I insisted on paying interest

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Fernandez - direct

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1 jpjw Fernandez - direct 231

2 Q I'm sorry?

3 A To make the check out to his daughter.

4 Q I show you what we have marked as Govern-

5 ment Exhibit 10 for identification.

6 Can you identify that exhibit?

7 A Yes, sir.

8 Q Would you tell us what Government Exhibit

9 10 for identification is?

10 A That's the interest on the money.

11 Q Did you prepare that check which is Govern-

12 ment Exhibit 10?

13 A The office prepared the check and I signed

14 the check.

15 Q You signed the check?

16 A Yes, sir.

17 Q And to whom is the check made payable?

18 A Alexandra Meyers.

19 Q Would you tell us who Alexandra Meyers is?

20 A My niece.

21 Q Is that Mr. Meyers' daughter?

22 A Yes, sir.

23 MR. JOSSEN: I offer Government Exhibit 10.

24 MR. GALLOP: No objection.

25 THE COURT: Received in evidence.

jpjw

Fernandez - direct

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(Government Exhibit 10 received

3

in evidence)

4

Q Mr. Fernandez, did there come a time when

5

Mr. Meyers asked you to write some letters for him in

6

connection with this \$25,000 loan?

7

A Yes, sir.

8

Q Do you recall when Mr. Meyers asked you to

9

write such letters?

10

A I can't recall the exact date, sir. It's

11

been such a long time.

12

Q Do you have any recollection as to the

13

period of time within which Mr. Meyers asked you to

14

write these letters?

15

A To the best I can remember, it is between

16

the time the check of the interest and the death of my

17

father.

18

Q I'm sorry?

19

A And the death of my father, sometime within

20

that period of time.

21

Q Would you tell us the month that would

22

encompass that period of time?

23

A December 1971 and October 1972.

24

Q Tell us, Mr. Fernandez, as best you can

25

recall, what Mr. Meyers said to you with respect to

jpjw

Fernandez - direct

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1 letters in connection with this loan?

2 A That he needed some letters indicating that
3 the money had been used in a business transaction and
4 that the money had been lost and could not be repaid at
5 that time.
6

7 Q Now, as a result of this request from Mr.
8 Meyers, did you prepare any letters?

9 A Yes, sir.

10 Q I show you what we have marked as Govern-
11 ment Exhibits 28, 29 and 30 for identification, and I
12 ask you if you can identify those exhibits.

13 A Yes, sir.

14 Q Would you tell us what Government Exhibits
15 28, 29 and 30 for identification are?

16 A The letters written in reply to his request.

17 Q Now, can you tell us, Mr. Fernandez, were
18 these letters which are Government Exhibits 28, 29 and
19 30 actually written on or about the dates which appear
20 on each of those letters?

21 A Frankly, sir, I can't recall.

22 Q Isn't it correct, Mr. Fernandez, that the
23 dates which appear on Government Exhibits 28, 29 and 30
24 were fabricated by you?

25 A Well, I had this loan registered, sir, in

jpjw

Fernandez - direct

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the books of the company and to me, you know, the official loan was the one in the books.

As far as the exact dates of this, I can't remember, sir.

Q Can you tell us what your best recollection is as to whether those letters which are Government Exhibits 28, 29 and 30 were actually written on or about the dates which appear on each of the letters?

A I don't recall, sir.

Q Mr. Fernandez, with respect to Government Exhibit 28, isn't it correct that that letter, the date on that letter was backdated or post-dated by you at some time after the date which appears on the exhibit?

A It could have been, sir. I don't remember.

MR. JOSSEN: Government offers Exhibits 28, 29 and 30 for identification.

MR. GALLOP: No objection.

THE COURT: Received in evidence.

(Government Exhibits 28, 29 and 30 received in evidence)

THE COURT: You may proceed.

Q Mr. Fernandez, I direct your attention to Government Exhibit 28 in evidence, the letter which is before you.

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Fernandez - direct

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2 It is correct, is it not, Mr. Fernandez,
3 that at the time you wrote that letter the statements
4 in that letter were not true?

5 A Yes, sir.

6 Q And it is correct, is it not, that you
7 prepared that letter which is Government Exhibit 28 in
8 evidence at Mr. Meyers' request, is that correct?

9 A The exact wording I don't think was the
10 question here. It was just the essence of what he wanted.
11 The wording could have been mine.

12 Q The substance of the letter, it is correct,
13 was prepared by you at Mr. Meyers' request, is that
14 correct?

15 A Yes, sir.

16 Q I direct your attention to Government
17 Exhibit 29 in evidence.

18 Do you have that letter before you, Mr.
19 Fernandez?

20 A Yes, sir.

21 Q At the time that you prepared that letter
22 which is Government Exhibit 29 in evidence, it is correct,
23 is it not, that the substance of that letter is not true
24 or was not true?

25 A Yes, sir.

jpjw

Fernandez - direct

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Q And it is correct, is it not, that you prepared the letter which is Government Exhibit 29 in evidence, the substance of that letter, at Mr. Meyers' request?

A Yes, sir.

Q I place before you what has been received in evidence as Government Exhibit 30 and direct your attention to that letter.

It is correct, is it not, Mr. Fernandez, that at the time that you prepared the letter which is Government Exhibit 30 in evidence, the substance of that letter was not true?

A Yes, sir.

Q It is correct, is it not, that you prepared that letter, Government Exhibit 30, the substance of that letter, at Mr. Meyers' request, is that correct?

A Yes, sir.

Q Mr. Fernandez, at any time during the course of the -- withdrawn.

Can you te-l us, sir, whether at any time while the \$25,000 was outstanding, was there any understanding between you and Mr. Meyers as to the use of that \$25,000 for an investment in commodities or meats of any sort?

1 jpjw Fernandez - direct 237

2 A No, sir.

3 THE COURT: I can't hear your answer.

4 A No, sir.

5 Q There was no such understanding, is that

6 correct?

7 A Yes, sir.

8 Q Now, did there come a time when you repaid

9 the \$25,000?

10 A Yes, sir.

11 Q And had you been asked by Mr. Meyers for

12 repayment of that loan?

13 A Well, I was supposed to repay the money

14 when he asked for it. And after giving me some time to

15 gather the money.

16 Q You repaid it, did you not, in response

17 to a request for the money from Mr. Meyers?

18 A Yes, sir.

19 Q Now, do you recall in how many installments

20 you repaid that \$25,000?

21 A In two checks, sir.

22 Q What were the amounts of the checks?

23 A \$10,000 and \$15,000 or \$15,000 and \$10,000.

24 Q Now, at the time that you paid these checks

25 to Mr. Meyers, did you ask Mr. Meyers to sign anything?

1 jpjw

Fernandez - direct

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2 A Yes, sir.

3 Q What did you ask Mr. Meyers to sign?

4 A A receipt for the money.

5 Q I show you what we have marked as Govern-
6 ment Exhibit 11 for identification and ask you if you
7 can identify that exhibit.

8 A Yes, sir.

9 Q Can you tell us what Government Exhibit 11
10 for identification is?

11 A It is a check for \$15,000.

12 Q And the date of the check?

13 A It is September 30, 1972.

14 Q Did you sign that check?

15 A Yes, sir.

16 Q And is Government Exhibit 11 for identifi-
17 cation one of the checks used by you in repayment of
18 part of the \$25,000 to Mr. Meyers?

19 A Yes, sir.

20 Q I show you what we have marked as Government
21 Exhibit 16 for identification and ask you if you can
22 identify that exhibit.

23 A Yes, sir.

24 Q Would you tell us what Government Exhibit
25 16 for identification is?

1 jpjw Fernandez - direct 239

2 A That is a receipt signed for the \$15,000

3 check.

4 Q Referring to Government Exhibit 11?

5 A Yes, sir.

6 Q Do you recognize Mr. Meyers signature on

7 Government Exhibit 16?

8 A Yes, sir.

9 MR. JOSSEN: I offer Government Exhibits

10 11 and 16.

11 MR. GALLOP: No objection.

12 THE COURT: Received.

13 (Government Exhibits 11 and 16

14 received in evidence)

15 Q Mr. Fernandez, I place before you what we

16 have marked as Government Exhibit 12 for identification.

17 Can you identify that exhibit?

18 A Yes, sir.

19 Q Would you tell us what Government Exhibit

20 12 for identification is?

21 A A check for \$10,000.

22 Q Is Government Exhibit 12 -- withdrawn.

23 Does your signature appear on that check?

24 A Yes, sir.

25 Q Is Government Exhibit 12 for identification

1 jpw Fernandez - direct 240
2 the balance of the repayment of the \$25,000 from
3 you to Mr. Meyers?

4 A Yes, sir.

5 Q I show you what we have marked as Govern-
6 ment Exhibit 17 for identification.

7 Can you identify that exhibit?

8 A Yes, sir.

9 Q Would you tell us what Government Exhibit
10 17 for identification is?

11 A The receipt for the check, \$10,000.

12 Q Can you identify Mr. Meyers signature on
13 Government Exhibit 17 for identification?

14 A Yes, sir.

15 Q Now, is Government Exhibit 17 a receipt
16 for the entire \$25,000 repayment ?

17 A It reads that way, sir.

18 MR. JOSSEN: I offer Government Exhibits
19 12 and 17.

20 MR. GALLOP: No objection.

21 THE COURT: Received in evidence.

22 (Government Exhibits 12 and 17
23 received in evidence)

24 Q Mr. Fernandez, did you pay any further
25 interest on the \$25,000 besides the check in December

jpjw

Fernandez - direct

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of 1971 which is Government Exhibit 10 in evidence?

A Yes, sir.

Q Do you recall when you paid further interest on that loan?

A No, not really, but it became due.

Q I show you what we have marked as Government Exhibit 13 for identification.

Can you identify that exhibit?

A Yes, sir.

Q Would you tell us what Government Exhibit 13 for identification is?

A It is a check for \$252.05.

Q Does your signature appear on the check?

A Yes, sir.

Q Is Government Exhibit 13 for identification a payment of interest in connection with the \$25,000 loan?

A Yes, sir.

MR. JOSSEN: I offer it in evidence.

MR. GALLOP: No objection.

THE COURT: Received in evidence.

(Government Exhibit 13 received in evidence)

Q Now, Mr. Fernandez, with respect to Government Exhibits 10, 11, 12 and 13 in evidence, the four

jpjw

Fernandez - direct

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checks, can you tell us whether you were directed by anyone as to who the checks were to be made payable to?

A Yes, sir.

Q Who directed you as to the names of the persons to whom the checks were to be made payable?

A Mr. Meyers.

Q Mr. Fernandez, during the year 1971, were you in a position to repay the \$25,000 if you had been requested to repay it with reasonable notice?

A Yes, sir.

Q Were you requested to repay the \$25,000 at any time in 1971 by Mr. Meyers?

A No, because they were paid later on.

Q My question is, in 1971, were you requested at any time during that year by Mr. Meyers to repay the \$25,000 or any part of it?

A Not to my recollection, sir.

Q Mr. Fernandez, directing your attention to the year 1971. Did you have occasion to see your sister, Mr. Meyers' wife, in Puerto Rico at any time during that year?

A She would come several times during the year to Puerto Rico to visit the family.

Q Did Mr. Meyers accompany her on those

jpjw

Fernandez - direct

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occasions?

A I don't recall but he customarily used to come for a few days to see her.

Q Do you remember seeing Mr. Meyers in Puerto Rico during the year 1971?

A I would say it was such a long time, he should have come. Yes. Normally, he did.

Q Do you remember seeing Mr. Meyers and your sister in Puerto Rico in 1972?

A Well, my sister would come every year several times.

Q And it is correct, is it not, that when your sister comes to Puerto Rico, her husband, Mr. Meyers, frequently comes with her?

A He would come one or two or three days. Maybe sometimes he didn't but other times he did, yes.

Q Mr. Fernandez, I show you what we have marked as Government Exhibit 24 for identification and direct your attention to this particular page.

Read it to yourself, please.

(Pause)

A Yes, sir.

Q Having read that page to yourself, does that refresh your recollection as to whether you saw Mr. Meyers

jpjw

Fernandez - direct

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and his wife Maria Meyers, your sister, in Puerto Rico in late December, 1971?

A We probably did, yes, sir.

THE COURT: I didn't hear the answer.

THE WITNESS: Yes, sir.

Q At that time when you saw Mr. Meyers in Puerto Rico in late December 1971, did you have any conversation with him with respect to a legitimate investment in the Dominican Republic between yourself and Mr. Meyers?

A Not to my recollection, sir.

THE COURT: Is the word "legitimate" a part of that question. You are talking about any investment. Don't ask the witness to make that kind of judgment.

Q Did you have any conversation with Mr. Meyers in December of 1971 in Puerto Rico about any investment between yourself and Mr. Meyers in the Dominican Republic?

A I can't recall. Not to my recollection.

Q Is it your best recollection that there was no such conversation?

A I don't remember it. I would say no.

MR. JOSSEN: I offer Government Exhibit 24 for identification.

1 JPJW Fernandez - direct 245

2 MR. GALLOP: May we approach the bench?

3 THE COURT: Perhaps we can discuss it
4 during the noon recess. Let's go on to something else
5 and I will discuss it when I let the jury go to lunch.

6 Q Mr. Fernandex, let me direct your attention
7 to July of 1972.

8 Did there come a time during that month
9 when you had occasion to travel to St. Martin?

10 A I can't remember a specific date, sir.
11 It is too long ago.

12 Q Do you recall there coming a time when you
13 had occasion to go to St. Martin with your wife and Mr.
14 Meyers and his wife, your sister, Maria Meyers?

15 A Yes, there was a time we went together
16 but I don't recall the date.

17 Q Do you recall where you stayed in St. Martin?

18 A Well, when I used to travel to that island,
19 I used to stay at the Concord.

20 Q Do you recall traveling to St. Martin with
21 Mr. and Mrs. Meyers on more than one occasion?

22 A I don't remember, sir.

23 Q Now, directing your attention to the time
24 that you were in St. Martin with your wife and Mr.
25 Meyers and his wife, your sister Maria, did you have

1 jpjw Fernandez - direct 246

2 occasion in that trip or during that trip to make
3 inquiry at a refrigeration plant about some meat?

4 A Personally, me personally?

5 Q You personally?

6 A Well, I had to travel through that island
7 for that purpose.

8 Q Do you recall specifically doing that on
9 the occasion when you were in St. Martin with Mr. and
10 Mrs. Meyers and your wife?

11 A I don't recall it specifically, sir. But
12 I had to go to that island to offer some meat that was
13 there.

14 Q Do you remember doing that at the time
15 that Mr. and Mrs. Meyers were in St. Martin with you?

16 A Well, I assume if I was there, I would
17 try to do what I normally did when I was in the island.
18 It was part of my job there.

19 MR. JOSSEN: May I have this marked as
20 Government's Exhibit 31 for identification, please.

21 (Government Exhibit 31 marked
22 for identification)

23 Q Mr. Fernandez, I show you this page of
24 Government Exhibit 31 for identification and ask if that
25 refreshes your recollection as to whether you visited

1 jpjw Fernandez - direct 247

2 the refrigeration plant to discuss meat on the same

3 occasion when you were in St. Martin with Mr. and Mrs.

4 Meyers?

5 A Well, again it was a time. Then this is
6 the date that we were there.

7 Q Does that refresh your recollection whether
8 you visited the refrigeration plant to discuss the
9 purchase of meat in St. Martin during the same trip that
10 you took to St. Martin with Mr. and Mrs. Meyers?

11 A I wasn't purchasing any beef out of that
12 plant, sir. I was offering it for sale to other people
13 in the islands.

14	Q	Fine.
----	---	-------

15 Was it during the same trip that you took
16 to St. Martin with Mr. and Mrs. Meyers when you had
17 occasion to visit the refrigeration plant with respect
18 to the sale of meat?

19 A I don't remember. You mean if I took
20 him over there?

21 Q No. I am asking you whether Mr. and Mrs.
22 Meyers were in St. Martin with you on the same trip when
23 you went to the refrigeration plant to discuss the sale
24 of meat.

25 A Sir, I know we were together once. This has

1 jpjw Fernandez - direct 248

2 to be the time, yes.

3 Q To your knowledge, Mr. Fernandez, did Mr.

4 Meyers have any connection with your visit to the

5 refrigeration plant concerning the sale of meat?

6 A No, sir.

7 MR. JOSSEN: I offer Government Exhibit 31.

8 MR. GALLOP: I would like to discuss that,

9 your Honor.

10 THE COURT: All right. Perhaps this is

11 a convenient time.

12 Members of the jury, we will resume at about

13 five minutes of two. Will you withdraw for lunch.

14 I must tell you that that lock is a little

15 bit fast. It's the only thing in this courthouse that is

16 fast.

17 You may step down, Mr. Fernandez.

18 (Jury left the courtroom)

19 THE COURT: What are the two papers which

20 are being offered now?

21 MR. JOSSEN: Specifically the government

22 is offering the entire diaries for 1971 and 1972 of Mr.

23 Meyers. I am offering them for a variety of reasons.

24 THE COURT: How is it you happen to have

25 them?

jpjw

Fernandez - direct

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1
2 MR. JOSSEN: Mr. Gallop turned them over
3 to me and I indicated to him, we had a discussion with
4 respect to the offering of these diaries.

5 Mr. Gallop indicated to me he would have
6 no objection to my offering the diaries.

7 MR. GALLOP: I'm sorry if I said it, I
8 don't recall it.

9 THE COURT: What are they offered to show?

10 MR. JOSSEN: Well, your Honor, first of
11 all, they are all relevant to the question of wilfulness
12 and intent in this case.

13 THE COURT: I don't know how the entire
14 diary could be relevant. I could see how particular
15 pages are relevant.

16 MR. JOSSEN: I will state this for the
17 Court.

18 When your Honor examines Government Exhibits
19 31 and 24, you will see that they are unusually documented,
20 well documented diaries.

21 I submit that there is an argument that
22 can be made to this jury with respect to the care with
23 which the defendant took in keeping records of his
24 deductions and expenses, and contrasted with what he was
25 doing with respect to items of income.

1 jbjw

Fernandez - direct

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2 So, I submit they are relevant for that
3 position.

4 THE COURT: They might be relevant for
5 rebuttal, if he stood up there and said it was all a
6 great big mistake by Ernst & Ernst.

7 MR. JOSSEN: I submit on the basis of
8 what Mr. Gallop's cross examination has been to date,
9 I presume Mr. Gallop intends to make that very argument
10 to the jury.

11 THE COURT: Well, is there any particular
12 page in here that is unduly prejudicial that ought not
13 to be admitted. Because I can see the argument which
14 Mr. Jossen is making, but if there is some particular
15 page which is unfair or inappropriate, I will give
16 consideration to redacting that page.

17 MR. JOSSEN: May I make a further proffer
18 which --

19 THE COURT: I wish I had clients who
20 kept books like this.

21 MR. JOSSEN: May I make a further proffer
22 with respect to these two diaries?

23 THE COURT: I can understand your argument
24 but if there is a particular page which is harmful to
25 him and has nothing to do with the case, I don't want the

1 jpjw Fernandez - direct 251
2 jury looking at something of a purely personal nature
3 which doesn't affect the issues in this case.

4 MR. JOSSEN: I want to point out certain
5 additional pages. December 29, 1971 diary page indicates
6 a dinner which is corroborated by a bill for \$109,
7 conversation with Fernandez and the Meyers with respect
8 to the investment.

9 THE COURT: I don't think anyone would
10 argue with you as to the admissibility of that page.

11 I am inclined to accept your argument
12 that the ~~entire~~ book is admissible. I know Mr. Gallop
13 is not objecting merely for exercise. I think I ought
14 to address the issue whether there is some page in here
15 which would be unfair to take and which has limited
16 relevance or no relevance at all.

17 If so, I am prepared to hear that.

18 MR. GALLOP: Well, your Honor, I know of
19 no particular page, but I certainly would like to discuss
20 with my client that particular problem.

21 THE COURT: If there is a particular page
22 that ought to be redacted for reasons of that sort, I
23 will entertain an application. But I think the entire
24 book and the method of keeping it and the nature of the
25 entries is relevant on the issue of mistake or the issue

1 jpjw

Fernandez - direct

252

2 of wilfulness.

3 So, you can come back with that problem
4 after lunch. But it is such a large amount of paper,
5 I can't read each page at this time.

6 MR. GALLOP: Are there any other specific
7 pages that the government is going to refer to?

8 MR. JOSSEN: Yes.

9 With respect to the July 1972 diary,
10 there is a trip indicated here, July 22nd through 30th
11 and the notation on the 30th, trip to St. Martin, re
12 Purchase of refrigeration plant and an accompanying
13 invoice of \$459.

14 MR. GALLOP: Are these the only two specific
15 pages that are going to be referred to?

16 MR. JOSSEN: No. There will also be
17 reference made to the first page of the January 1972
18 diary in which the \$109 deduction was again taken on
19 December 29, 1971.

20 THE COURT: I will be in recess, gentlemen.
21 I will receive the two diaries in evidence subject to
22 an application to redact any particular page which is
23 considered by defendant to be totally unrelated to the
24 issues of this case and unduly prejudicial or particularly
25 private. But I think there is a very sound argument for

1 jpjw Fernandez - direct 253
2 taking the entire diary, subject to redaction.
3 MR. JOSSEN: I am going to turn over to
4 Mr. Gallop xerox copies that I have from certain pages
5 of the '71 and '72 diary which we have selected out as
6 very possible pages which we will make some argument to
7 the jury about.
8 THE COURT: That may be helpful if you
9 do that. I will be in recess.
10 (Luncheon recess)
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jpjw

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AFTERNOON SESSION

2:00 P.M.

(In open court - jury present)

MR. JOSSEN: May we approach?

THE COURT: Yes.

(At the side bar)

MR. JOSSEN: Your Honor, I would request a ruling from the Court on Government Exhibits 24 and 31, the two diaries.

THE COURT: I gave you a ruling. I will take them subject to redaction of any particular page or pages which defendant wishes to apply to have redacted.

MR. JOSSEN: I wanted to clear it up and Mr. Gallop examined it and indicated there are no pages he wishes to redact; is that correct?

MR. GALLOP: Just for the record, my objection to the balance of the diary was on relevance. There are no pages which I wish to redact.

THE COURT: I take it as being relevant bearing on its intent and the nature of his own knowledge concerning his income and disbursements which is at issue under the scope of the cross examination we have had and the opening statement.

jpjw

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(In open court)

(Government Exhibits 24 and 31 received

in evidence)

MR. JOSSEN: Your Honor, if I might announce another stipulation to the jury.

It is stipulated by and between the government of the United States and the defendant, Harvey Meyers, that Government Exhibits 24 and 31 are the diaries of Mr. Meyers. That they were turned over to the government at the government's request by Mr. Meyers recently and that the tape which surrounds Government Exhibit 24 was on the exhibit when it was turned over to the government by Mr. Meyers' attorney.

Is that correct, Mr. Gallop?

MR. GALLOP: Yes, that's correct.

M A R C E L I N O F E R N A N D E Z , resumed.

DIRECT EXAMINATION CONTINUED

BY MR. JOSSEN:

Q Mr. Fernandez, at any time in 1971 or 1972, did you ever tell Mr. Meyers that you could not or were unable to repay the \$25,000 to him?

A Not that I recall, sir.

Q Is it your best recollection that at no time in 1971 or 1972 that you ever told Mr. Meyers that

1	jpjw	Fernandez - direct	256
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2 you could not repay the \$25,000?

3 A I don't recall telling him. No.

4 Q Did you at any time in 1971 -- withdrawn.

5 Did you at the time that you received
6 the \$25,000 from Mr. Meyers have any understanding as
7 to what Mr. Meyers expected you to do with the money other
8 than to hold it for him until such time as he asked it
9 back from you?

10 A No. It was given as a personal loan and
11 put into the business. That's all.

12 Q Did you have any understanding with Mr.
13 Meyers at the time that you got the \$25,000 that he
14 expected you to put the money into your business?

15	A	No.
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16 Q Mr. Fernandez, with respect to Government's
17 Exhibits 28, 29 and 30 in evidence, can you tell us,
18 sir, whether they were typed by you or by somebody else?

19 A They were typed by me, sir.

20 Q Can you tell us, Mr. Fernandez, were Govern-
21 ment Exhibits 28, 29 and 30 prepared by you on one
22 occasion or more than one occasion?

23 A It is hard for me to tell, sir. It's been
24 such a long time, I don't really recall. It could have
25 been all at the same time.

jpjw

Fernandez - direct

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Q What is your best recollection, were they prepared at the same time or on different occasions?

A They were probably prepared at the same time, sir.

Q That is your best recollection?

A Yes.

MR. JOSSEN: Your Honor, may I circulate these three exhibits to the jury?

THE COURT: Yes.

Q Mr. Fernandez, would you tell us the nature of the business of Frozens, Incorporated?

A Well, we trade, distribute frozen products, beef, pork.

Q On the occasions of 1971 and 1972 when you saw Mr. Meyers in Puerto Rico, is it correct to say that these were social visits?

A Yes, sir.

Q Did you during 1971 and 1972 when Mr. Meyers was in Puerto Rico have occasion to go out to dinner with Mr. Meyers and his wife Maria?

A Yes, sir.

Q Now, have you on any occasion ever had any conversation with Mr. Meyers about the subjects of taxes or money?

1 jpw Fernandez - direct 258

2 A Well, you know when you are talking and
3 you are at dinner and you talk about everything. You
4 talk about money, you talk about taxes, yes, sure.

5 Q Please keep your voice up, Mr. Fernandez.

6 My question is, have you had any conversations
7 with Mr. Meyers about the subject of taxes or money?

8 A I would say yes, sir.

9 Q Have you had more than one conversation
10 with him about that subject?

11 A I would say yes, sir, probably. It is
12 such a long time, but I would say yes.

13 Q Do you recall the substance of any of your
14 conversations with Mr. Meyers with respect to the topic
15 of taxes or money?

16 A He talked about money. He talked about
17 taxes, you know, high taxes and all that.

18 Q What did he say?

19 THE COURT: It would be necessary to fix
20 a time. Prior to April, 1973.

21 Q Can you tell us, Mr. Fernandez, whether you
22 recall having any such conversations about taxes or money
23 with Mr. Meyers prior to the time that you received the
24 \$25,000 from him in 1971?

25 A I would say, sir, in all probability because

1 jbjw Fernandez - direct 259
2 it was a topic of the conversation. You know, when you
3 go out with somebody you talk about money and taxes and
4 all that, yes, sir.

5 Q Now, prior to the time that you received
6 the \$25,000 in 1971, do you recall the substance of any
7 conversation that you had with Mr. Meyers about the topic
8 of money or taxes?

9 A The substance in itself, you know, details
10 and all that I can't remember. But we talked about money
11 and taxes being high and all that.

12 Q What did Mr. Meyers say?

13 A Taxes were high.

14 Q Did you have any such conversations with
15 Mr. Meyers about the subject of taxes or money after you
16 got the \$25,000 from Mr. Meyers?

17 A I would say I probably did, yes, sir.

18 Q Do you recall the substance of any of those
19 conversations?

20 A It would be basically the same thing.

21 Q Did you have any such conversation with
22 Mr. Meyers about the subject of taxes or money in 1971
23 and '72?

24 A Yes, along the same lines, yes, sir.

25 Q Is it fair to say, Mr. Fernandez, that on

1 jpjw Fernandez - direct 260
2 every occasion when you have seen Mr. Meyers in Puerto
3 Rico in 1971 and 1972 you had a conversation with him at
4 some point about money and taxes?

5 A Well, you know, sometimes during his
6 stay over there, I would say probably yes. Yes.

7 Q Can you tell us whether in substance Mr.
8 Meyers said the same thing in each of these conversations
9 about money and taxes?

10 A I would say the words were not that but
11 in essence it would probably be the same, yes.

12 Q What was the substance of those conversations?

13 A Well, money and high taxes and all that,
14 yes.

15 Q Is it fair to say that Mr. Meyers in those
16 conversations was complaining to you about the taxes
17 he had to pay?

18 A Sir, I don't know whether he would be
19 complaining to me. But he was just -- I don't know,
20 it is a guess -- expressing an opinion. I can't really
21 tell what he had in mind.

22 Q Can you tell us what opinion you remember
23 Mr. Meyers stating to you in those conversations in 1971
24 and 1972?

25 A Well, we would talk about money and we would

1 jpjw Fernandez - direct/cross 261
2 talk about the high taxes.

3 Q What would he say about high taxes?

4 MR. GALLOP: I think we have covered this
5 several times, your Honor.

6 THE COURT: He is not on trial for his
7 opinions. I think we have covered it. It is what you
8 do and not what you think that counts.

9 MR. JOSSEN: I have no further questions
10 of the witness, your Honor.

11 CROSS EXAMINATION

XXX

12 BY MR. GALLOP:

13 Q Mr. Fernandez, did you ever tell anyone
14 that the reason Harvey Meyers sent you the \$25,000 in
15 1971 was because you asked his wife if he would loan
16 you the money?

17 A Would you repeat the question?

18 THE COURT: I will have the reporter
19 read the question back.

20 (Record read)

21 A I don't recall ever asking for the money,
22 sir.

23 Q You never asked Maria, your sister?

24 A I don't ever recall asking my sister for
25 money, sir.

1 jpjw

Fernandez - cross

262

2 Q Now, you say this money was a personal loan?

3 A Yes, sir.

4 Q And that Harvey asked you for a personal
5 loan -- I mean Harvey indicated to you that it was a
6 personal loan?

7 A Yes, sir.

8 Q And the check as it originally came to you
9 on the front had the notation "personal loan", right?

10 A Yes, sir.

11 Q It came with a letter, is that correct?

12 A Yes, sir.

13 Q And if I may, I will just read it to the
14 jury.15 THE COURT: State the number for the
16 record.17 MR. GALLOP: It is Exhibit No. 14 in evidence.
18 It is dated July 21, 1971.19 (Mr. Gallop read from Government
20 Exhibit 14 in evidence to the jury)21 Q This is the letter which accompanied the
22 check?

23 A Yes, sir.

24 Q You received the letter and the check
25 simultaneously?

jpjw

Fernandez - cross

263

1

2

A Yes, sir.

3

Q Now, what did you do with the check

4

when you received it?

5

A I endorsed it and I deposited it in the

6

account of Frozens, Inc.

7

Q Is that your personal bank account?

8

A No, sir.

9

Q What is the account of Frozens, Inc.?

10

A The account of the company.

11

Q I see. So you took the money that was

12

sent to you as a personal loan and you put it into

13

business?

14

A Into the company, yes, sir.

15

Q Did you have a personal bank account?

16

A Yes, sir.

17

Q Can you tell us why you didn't put the

18

money into your personal bank account?

19

A Because I wanted to have that very clear

20

on record and I didn't want that to have anything to

21

do with me personally.

22

Q Well, it was sent to you marked personal

23

loan with a letter indicating it was a personal loan?

24

A Yes.

25

Q And you are saying now, that you didn't

1 jpjw

Fernandez - cross

264

2 want it to appear to be a personal loan?

3 A Sir, I recorded it -- I deposited it into
4 the company to make sure that it was kept clear on
5 record that this was a loan which was going to be handled
6 that way.

7 Q Did you tell Harvey Meyers before you
8 deposited it that it was going into the company account?

9 A I do not recall whether I did. But I
10 sent him a receipt from the company.

11 Q So, when the check came back to Mr. Meyers
12 and he turned over the endorsement, he was able to
13 ascertain at that time that it didn't go into your
14 personal account but it went into your business account?

15 MR. JOSSEN: Objection, your Honor.

16 THE COURT: That is sort of argumentative
17 but anyone in the jury can look at the endorsement.

18 I will sustain the objection.

19 Q Now, this is the receipt that you sent
20 back to your brother-in-law when you received the money,
21 right?

22 A Yes, sir.

23 Q And it is a receipt from your business,
24 isn't that correct?

25 A Yes, sir.

1 jpjw Fernandez - cross 265

2 Q And if you look at the receipt, you said
3 "We accept this money as a loan which we will repay as
4 soon as possible."

5 Do you see that sentence in the receipt?

6 A Yes, sir.

7 Q Who is the "we" who you are referring to?

8 A The plural, which is the company.

9 Q You were accepting it on behalf of the
10 company and you said the company would repay it back as
11 soon as possible; is that correct?

12 A That's correct, sir.

13 Q Now, up to the time that you sent out this
14 receipt, did you send any other correspondence or did
15 you send anything to Mr. Meyers which would indicate
16 that you were not going to treat that \$25,000 as a
17 personal loan but were going to take it and put it into
18 the business?

19 A Frankly, I don't recall, sir. But I don't
20 think so.

21 Q Now, by the way, Mr. Fernandez, the business
22 Frozens, Inc. in 1971 or 1972, what was the nature of that
23 business?

24 A About the same thing that I expressed before.
25 It was to distribute products, meat or beef.

1 jpjw Fernandez - cross 266

2 Q Where were these products distributed?

3 A In Puerto Rico.

4 Q Anywhere else?

5 A Not to my recollection, sir.

6 Q Did you have any other business at that

7 time?

8 A Where, sir?

9 Q In Puerto Rico or elsewhere?

10 A In Puerto Rico, at that time, I think it

11 was another company, one or two more companies at that

12 time, sir.

13 Q What business were they engaged?

14 A One was in the representation of firms and

15 the other one was in the distribution of institutional

16 products.

17 Q The one in the representation of firms,

18 what do you mean by that?

19 A We would sell products for the firms.

20 Q Where would you sell those products?

21 A In Puerto Rico.

22 Q Anywhere else?

23 A Well, no -- basically it was Puerto

24 Rico.

25 Q The other firm, what did they do?

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Fernandez - cross

267

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jbjw Fernandez - cross 26

meat there that had to be sold and that's the purpose
why I traveled to St. Martin and some of the islands
trying to sell that meat.

When I say plant, I mean a freezer. We would travel to Santo Domingo because at that time there was meat coming out of the slaughter house there where we sort of handled the meet for them.

Q So, you had a business arrangement in Santo Domingo at that time?

A No, sir, Not in '71 or '72, sir, I don't think so. An interest in the product.

Q An interest in the product in Santo Domingo,
but you imported beef from there?

A We did not import meat, sir.

Q Explain to me what you did in Santo Domingo, I just don't understand.

A I mean are we referring to Frozens, Inc. ?

Q To any of your business interests at that time.

A Well, Frozens never acted in the importation. The other company was in the distribution of institutional food and there it had nothing to do with it.

The other company would sell product for account of another party. Therefore, there would not --

jjjw

Fernandez - cross

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we never actually imported any meat.

Q What did you do when you went to Santo Domingo?

A To see that the product would be shipped to Puerto Rico and arrive with a good product, well packed.

Q On whose behalf did you go to Santo Domingo?

A On account of some principals that we represented.

Q So, you represented people who exported meat from Santo Domingo?

A Yes.

Q I see.

A Exported you said, sir?

Q Is that correct?

A Yes, they ship meat to Puerto Rico.

Q They ship meat from Santo Domingo to Puerto Rico?

A Yes.

Q Is it fair to say that during this time you had a business activity which took you to Santo Domingo which involved shipping meat from Santo Domingo to Puerto Rico?

A That's correct, sir.

1 jpjw

Fernandez - cross

2 Q Did you invest any money in this business
3 of importing meat in Santo Domingo?

4 A In '71 or '72, I don't recall. I don't
5 believe we had any investment there at that time.

6 Q Did you have any investments there
7 after that time?

8 A After that time, yes. I don't recall
9 the exact year but it was not in '71 or '72, if I recall,
10 correctly, sir. It has been a long time.

11 Q Now, Frozens, Inc., was that a family
12 business?

13 A It was originally, yes, sir.

14 Q Who originally owned Frozens, Inc.?

15 A My father and myself.

16 Q Did you own it all the time with your
17 father?

18 A Well -- would you repeat the question?

19 Q I will withdraw it and rephrase it.

20 Originally did your father own Frozens,
21 Inc. himself?

22 A No, sir.

23 Q Did he always own it with you?

24 A Yes, sir.

25 Q Did you purchase your interest in the

jpjw

Fernandez - cross

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1 business?

2 A My interest in the business?

3 Q Yes.

4 A No. We separated from another associate
5 in another company that we had in the year 1969. And
6 after that separation with the proceeds that we had in
7 the other business, he and I went into business and each
8 put his own share into the business.

9 Q Were there any other family businesses
10 at that time?

11 A If I recall correctly, I think I mentioned
12 that there were two other firms at the time.

13 Q Were they family business also?

14 A They all came the same way, sir.

15 Q Were they owned originally by you or originally
16 by your father or both of you?

17 A Another one was with my father and myself.
18 The other one had another individual in the business
19 also.

20 Q Now, did there come a time when you purchased
21 your father's interest in the business?

22 A Yes, sir.

23 Q When did you purchase your father's interest
24 in Frozens, Inc.?
25

1 jpjw Fernandez - cross 272

2 A It was around 1970, I think it was, sir.

3 Q And how did you finance that loan?

4 A By notes payable.

5 Q In other words, you had notes which were
6 payable to your father?

7 A Yes, sir.

8 Q Was that agreement entered into in 1970?

9 A I believe it was around 1970, yes, sir.

10 Q Can you recall the amount of the purchase
11 price that you were to take --

12 THE COURT: Does this affect this case?

13 MR. GALLOP: I think so, your Honor.

14 A Somewhere I would say, sir, around \$60,000,
15 50, \$60,000.

16 Q When did you start making payment for those
17 notes?

18 A I forgot, sir. I can't recall exactly
19 when.

20 Q Did you start making payment at the time
21 you took over the business?

22 A I know that I made the first payments to
23 my father who was still alive. So, I had to make payments
24 to my father. It would have been 1971 and 1972, I guess.
25 So, I don't recall the dates.

jpjw

Fernandez - cross

273

1 Q Did payments commence about the time you
2 received this \$25,000?

3 A It would be hard for me to say, sir, because
4 I don't remember.

5 Q Did your sister have any interest in any
6 of these businesses?

7 A No, sir.

8 Q Did she have any interest in your father's
9 share of the business?

10 A Well, he was alive, I don't see why -- my
11 father was alive and my mother was alive.

12 Q When your father died, did she receive
13 any interest in any of these businesses?

14 MR. JOSSEN: I will object, your Honor.

15 THE COURT: If he knows. I don't see how
16 it has any connection with this case but I will take it
17 subject to connection.

18 THE COURT: When did your father die?

19 THE WITNESS: October, 1972.

20 Q Did your sister receive any interest from
21 the business when your father died?

22 A No, she did not.

23 Q Did you ever express to anyone that you
24 felt you owe your sister a debt or an obligation because
25

jpjw

Fernandez - cross

274

1 she received nothing from the family business?

2 A No, sir.

3 Excuse me, sir. Did I understand you
4 correctly that I owe her?

5 Q Did you ever express to anyone that you
6 had an obligation to your sister to give her some portion
7 of the family business?

8 A No, it could be sold before my father
9 died.

10 Q Sold to you?

11 A Yes, sir.

12 Q Now, getting back to the \$25,000 check,
13 you signed -- you acknowledged receipt on the Frozens
14 memorandum which is Exhibit 15 in evidence; is that
15 correct?

16 A Yes, sir.

17 Q Now, when did you find out from Mr. Meyers
18 that this personal loan was to be treated as a business
19 loan?

20 MR. JOSSEN: Objection, your Honor.

21 THE COURT: It is cross examination. He
22 can ask him that.

23 Overruled.

24 THE WITNESS: Would you repeat the question,
25

1 jpjw

Fernandez - cross

275

2 sir?

3 Q When did you find out from Mr. Meyers that
4 this personal loan was to be treated as a business loan?

5 A Well, he gave me money as a personal loan
6 and I put it into the business just to have it clear on
7 the record.

8 Q Clear on recor as to what?

9 A As to where the money was and what the
10 money was.

11 Q What did the record show the money to be?

12 A You know, some loan and that's all there
13 was to it, sir.

14 Q The record showed the money to be a loan
15 to your business, isn't that correct?

16 A No, it was a personal loan and I owned the
17 company, sir.

18 Q When the money was repaid to you -- excuse
19 me, I withdraw that.

20 When you repaid the money and the
21 interest to Mr. Meyers, did you pay it as a personal
22 debt or a business debt?

23 A I would just -- you mean the interest?

24 Q Yes.

25 A I would just take the money out of the company

jpjw

Fernandez - cross

276

1 and given it back to Mr. Meyers.

2 Q The money came out of the company; is that
3 correct?

4 A Yes, sir.

5 Q And it appears as if it is a check from
6 Frozens, Inc.; is that correct?

7 A That's correct.

8 Q Is there anything on the check, Exhibit 11,
9 the check for \$15,000 which indicates that this is a
10 personal obligation of yours that you were paying and not
11 a business obligation?

12 A Not on the check, sir, but on the voucher --

13 Q Just answer my questions, please, Mr.
14 Fernandez.

15 With the statement of \$10,000, Exhibit 12
16 in evidence, again, is there anything on the check of
17 Frozens, Inc. which indicates you are paying a personal
18 obligation and not a business obligation?

19 A No, sir.

20 Q Now, you received \$25,000 from Mr. Meyers
21 which you say you put into the business account.

22 THE COURT: We have had all this, haven't
23 we? It is getting repetitious, Mr. Gallop and you are
24 wasting time.
25

jpjw

Fernandez - cross

277

Q You received \$25,000 into the business account. You also took the money for the interest out of the business account, is that correct?

A Yes, sir.

Q Now, you took some \$1350 out of the business to pay the interest on this loan, is that correct?

A Yes, sir, if those are the checks, yes.

Q Did you in any way repay the business for the \$1350 that you took out of the business to pay this interest?

A I would have to go back to the records because that was entered as a loan, sir.

Q Entered where as a loan?

A It was entered as a loan in the company books.

Q It was entered on the books of your company as a business loan?

A That would be hard to say right now how it was entered. But I know it was as a loan and it was repaid as a loan with interest.

Q The interest was entered as an expense of the business as interest on a loan?

A It is hard for me to recall at the present time how the interest was computed.

jpjw

Fernandez - cross

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2 Q Did you make any arrangements to reimburse
3 the loan through your company?

4 A I was the only stockholder of the company
5 at the time, sir.

6 Q Now, you say Mr. Meyers asked you to prepare
7 three letters; is that correct?

8 A Three letters specifically? I don't
9 recall, sir.

10 Q Well, did Mr. Meyers ask you to prepare any
11 letters?

12 A Well, he asked me to prepare in essence
13 some letters.

14 Q When did he ask you to prepare these letters?

15 A It was such a long time, frankly, sir, I
16 can't hardly pinpoint the date, but it was sometime between
17 December when there was the first payment of the interest
18 and the death of my father, prior to the death of my
19 father.

20 Q Now, you say you prepared these letters
21 yourself?

22 A Yes, sir.

23 Q Now, in preparing the letter for yourself,
24 the content of these letters indicate a business deal
25 between you and Mr. Meyers?

jpjw

Fernandez - cross

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2 Q Can you tell us why you prepared such
3 letters if this was not the fact?

4 A I was asked to express that on the letter,
5 sir.

6 Q Excuse me, I didn't hear you.

7 A I was asked to express that on the letter,
8 sir.

9 Q You simply did it because Mr. Meyers asked
10 you to do it, sir?

11 A We are family, sir.

12 Q Excuse me?

13 A We are family, sir.

14 Q You knew each letter was false at the time
15 you typed it and you didn't object to typing it?

16 A I know they were wrong but I was just
17 trying to please my family, sir.

18 Q Did you tell Mr. Meyers, "Well, this
19 was a personal loan from you"? Did you express any
20 thoughts about that?

21 A I'm certain I had to express concern for
22 him however I was on record with the loan made to the
23 company and there was a receipt issued for the official --
24 official receipt issued for the money.

25 Q Are you saying that at the time you prepared
these, you did feel it was a business loan?

jpjw

Fernandez - cross

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1 A No, sir, I was just trying to please my
2 family, that's all.

3 Q In other words, you were just doing
4 what you were told to do?

5 A What I was asked to do, yes.

6 Q And you didn't question it in any way?

7 A Well, it is a long time. I don't remember
8 what the words could have been between us, but I did it,
9 sir.

10 Q Now, when you prepared these three letters
11 which indicated that this was a business transaction, can
12 you explain to us why the checks which you made out were
13 made out, Exhibit 11 to Maria Meyers, Exhibit 12 to
14 M. Meyers, Exhibit 10 to Alexandra Meyers and Exhibit 13
15 to M. Meyers?

16 Can you explain why you made them out to
17 your wife and her children?

18 A To my wife?

19 Q Well, M. Meyers -- excuse me, to your
20 sister and her children? That is, instead of to Mr. Meyers,
21 if it was to be a business transaction?

22 A I was asked to issue a check, sir.

23 Q Are you saying that on one hand Mr. Meyers
24 asked you to write letters which indicated this was a
25

jpjw

Fernandez - cross

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business transaction and on the other hand you are asked to write checks which indicated it was a family transaction?

A I was asked to do it that way, sir.

Q And you did it that way?

A Yes, sir.

Q You didn't question it at all?

A No, sir.

Q And at the time you were a business executive and you had knowledge of commerce and business, didn't you?

A Yes, sir.

Q You appreciated you were writing checks on your business when you used the Frozens checks, right?

A Yes, sir.

Q You made sure there were entries in the business books and records to indicate that?

A Definitely so, sir.

Q On the records of your business it looked like a business transaction?

A Definitely so, sir.

Q Now, having done all that -- looking at Exhibit 15, Mr. Fernandez --

A Yes, sir.

Q -- can you tell us if Mr. Meyers also

1 jpw Fernandez - cross 282

2 insisted that you prepare such a receipt as Exhibit 16?

3 A No, sir. I was the one that issued it.

4 Q Excuse me, I didn't hear that.

5 A I was the one that issued that receipt.

6 Q Was that prepared because you wanted it

7 done or because Mr. Meyers wanted it done?

8 A I wanted it done because the checks were

9 not paid out, as you said, sir.

10 Q In other words, you insisted that it be

11 done this way?

12 A Yes, sir. It was on the official records.

13 Q And you had Mr. Meyers, his wife, your

14 sister, and Frozen sign this receipt?

15 A Yes, sir.

16 Q Can you explain, instead of using the

17 receipt like this, you simply didn't insist that Mr.

18 Meyers accept the check made out to him from Frozens?

19 A It was his money. I had to repay it, that's

20 all.

21 Q But you were able to insist on a receipt

22 drawn in the manner that you wanted it to be drawn; is

23 that correct?

24 A It was accompanying the records, sir.

25 Q Did you indicate to him in any way that

1	jpjw	Fernandez - cross	283
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2 because it was accompanying the records that it was
3 money that you wanted to return to him rather than to
4 his wife and children?

5 A As long as it was a receipt, I could
6 please him in any way he wanted.

7 Q And turning to Exhibit 17.

8 A Yes, sir.

9 Q Again, that receipt, was that prepared at
10 your insistence or at Mr. Meyers' insistence?

11 A No, I prepared the receipt, sir.

12 Q Was this done because you insisted that it
13 be done this way?

14 A I didn't insist. I just made it out that
15 way and I had it signed.

16 Q Well, did this receipt accompany the
17 checks?

18 A Yes, sir.

19 Q Were you going to deliver these checks
20 unless the receipt was signed?

21 A No, I never thought that they would not
22 sign the receipt, sir.

23 Q Now, looking at both receipts, both
24 receipts say "Received from Frozens, Inc."

25 Do you see that?

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Fernandez - cross

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A Yes, sir.

Q Is there anything on either receipt which indicates that the money that Mr. Meyers received was a personal loan made to you?

A No.

Q This receipt that you drew --

MR. JOSSEN: Your Honor, out of the interest of the rule of completeness, I would ask Mr. Gallop to make full reference to the receipt he is talking about.

THE COURT : At least the number should be stated. Any exhibit ought to be stated by number.

MR. GALLOP: Exhibit 16 and 17. Two receipts.

MR. JOSSEN: He read a line from --

THE COURT: You will get a chance in a moment or two.

Q Both receipts begin with the same phrase, I received from Frozens, Inc.

Is there any indication on either receipt that this money was originally given to you as a personal loan?

THE COURT: They are in evidence and they speak for themselves and we are wasting time. Go on to the next question. They may be read to the jury or shown

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Fernandez - cross

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to the jury and the members of the jury may look at any exhibits they want during their deliberations.

THE COURT: How old are you, Mr. Fernandez?

THE WITNESS: Forty-one.

THE COURT: You are forty-one?

THE WITNESS: Yes, sir.

THE COURT: How far did you go in school?

THE WITNESS: I went to the Georgetown University, sir.

THE COURT: You are a graduate of Georgetown University?

THE WITNESS: Yes, sir.

THE COURT: Do you hold a bachelor of arts degree?

THE WITNESS: Yes, sir.

THE COURT: Do you have any further education beyond that?

THE WITNESS: No, sir.

Q Mr. Fernandez, you testified on direct examination that at all times you could have paid this \$25,000 back to Mr. Meyers, that you never were in a position where you couldn't pay it; is that correct?

A Yes, given ample notice.

Q Can you explain why you made payments in

jpjw

Fernandez - cross

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two checks instead of one check of the \$25,000?

A Because I was asked -- you know, I asked for ample notice and I was allowed to split it in two checks.

Q You were allowed to do it that way; is that it?

A Yes, sir.

Q Getting back to the trip to St. Martin that was referred to, there was a refrigeration plant on that island?

THE COURT: We all know that, Mr. Gallon. Every member of the jury knows there is a refrigerator plant in St. Martin.

Q Did you have any discussion with Mr. Meyers about investment in that refrigeration plant?

A I don't recall that, sir.

Q Do you recall taking Mr. Meyers and his wife to see that plant?

A I probably did. I had to go there to work.

Q And you took Mr. and Mrs. Meyers with you?

A I probably took it to show it to them.

Q Did you ever discuss any investments with Mr. Meyers during the years 1971 and 1972?

A As investments themselves, I don't recall

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Fernandez - cross

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any in particular, no, sir.

Q Do you know what your brother-in-law did for a living in 1971 and 1972?

A Yes. I think already worked for the New York Stock Exchange, right.

Q Do you know what he did?

A What do you mean, in his job?

Q Yes.

A He was a broker on the floor.

Q Did you know what that meant? What did that mean to you?

A In what respect, sir?

Q Did you know him to be in the investment business in any way?

A Not that I recall. He was buying and selling stock for the floor, right?

Q Yes. And the stock was shares in companies; is that correct?

A Yes.

Q Did he ever discuss that with you?

A We probably in the course of the conversation discussed general topics, sir.

Q Did he ever discuss investments with you?

A The word investment, sir, you mean talking

1 jpjw

Fernandez - cross

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2 about business venture?

3 Q Business ventures, investing money in
4 ventures, buying, selling, investing other people's
5 money?

6 A We talked in general but I don't recall
7 any specifics -- it's been a long time.

8 Q You recall no conversations in 1971 and
9 1972 about that?

10 A Sir, it's been such a long time that
11 specifically I can't remember.

12 No, I don't think so.

13 Q Can you tell us what was so particularly
14 interesting about this refrigeration plant in St. Martin
15 that you decided to take Mr. and Mrs. Meyers when they
16 were down there?

17 A I had to go down there often, sir. If I
18 recall, I took my children with me and as I recall, he
19 took his children with him and I took it as a vacation
20 and I had to go there to work.

21 Q I don't mean St. Martin. I don't mean what
22 was interesting about St. Martin. I wanted to know what
23 was interesting about the refrigeration plant that you
24 took Mr. and Mrs. Meyers to see the plant.

25 A I don't -- interested in the amount. We

1 jpjw Fernandez - cross/redirect 289
2 had the refrigeration business.

3 MR. GALLOP: No further questions.

4 THE COURT: Are you finished?

5 MR. GALLOP: Yes, your Honor.

6 REDIRECT EXAMINATION

7 BY MR. JOSSEN:

8 Q Your trip to St. Martin with the Meyers
9 was a vacation, was it not?

10 A Sir, I was going there so often, sir, that
11 I know I took my wife and my children with me and I
12 mixed both in, vacation and whatever I had to do to see
13 about the business.

14 Q And the Meyers went with you, did they not,
15 for a vacation; isn't that correct?

16 A I would assume, they came for a vacation.

17 MR. GALLOP: I move to strike that answer
18 as being assumption on the part of the witness.

19 THE COURT: Well, I will strike out the
20 answer. The witness may not assume. The witness tells
21 what he knows.

22 Q Did you have any conversations with Mr.
23 Meyers at the time that you went to St. Martin with respect
24 to why Mr. Meyers was going to St. Martin?

25 A Sir, we are the family. I mean I was going

1 jpjw Fernandez - redirect 290

2 and we went together. I mean we went for a good time.
3 I mean, I don't know. I went there with my wife so she
4 could have good time and I assume my sister would go
5 with us and the children.

6 Q Did you have any conversation with Mr. Meyers
7 about your trip to St. Martin as to why Mr. Meyers was
8 going?

9 A Specifically you mean business?

10 Q Yes.

11 A I may have discussed my business with him
12 there. But not to my recollection, sir. I would say no --
13 I don't recall but I don't think so, sir.

14 Q Now, Mr. Fernandez, Government Exhibit 16
15 and 17, the receipts were prepared at your direction;
16 is that correct?

17 A I typed them, sir.

18 Q These particular receipts?

19 A Yes, sir.

20 Q And you included, did you not, in each
21 receipt your own name after the name Frozens, Incorporated?

22 A Yes, sir.

23 Q Now, by including your own name in Govern-
24 ment Exhibit 16 and 17 in these receipts, was it your
25 intention to make reference to the fact that the money

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Fernandez - redirect

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had been loaned to you as a personal loan?

MR. GALLOP: I will object to that question.

THE COURT: Sustained.

Q Mr. Fernandez, was there any particular reason why you wanted to have the \$25,000 loan from Mr. Meyers clear on your records?

A Yes, sir. I wanted to have that money clear. It was not my money and I wanted to have it on record there that it was there, everything was well organized and kept there clear.

Q Was there any other reason why you wanted that loan to be clear on the records of Frozens?

A Well, you know, the money had been offered to me, sir, and I wanted to keep track of it very clear that it was in the company and it was nothing personal of mine and -- in other words, I just wanted to have it very clear and official, sir.

Q Would you tell us whether there was any reason why you wanted to have -- you wanted the loan to be listed very clearly in the records of Frozens?

A Well, the money had been offered and just to be kept until payment was requested and naturally, I was not -- I mean I was not too clear as to the final motives, so I just didn't want any problems and I kept it

1 jpjw

Fernandez - redirect

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2 there.

3 Q The final motives of whom?

4 A Well, Mr. Meyers.

5 Q Was there anything in particular that you
6 can recall that made you concerned about what Mr. Meyers'
7 motives were with respect to the \$25,000 loan?

8 A Would you repeat that, sir?

9 Q Was there anything in particular in your
10 mind that had occurred that made you concerned about Mr.
11 Meyers' motives with respect to the \$25,000 loan?

12 MR. GALLOP: I am going to object to that
13 question.

14 THE COURT: I will have to take an offer
15 of proof before I can rule on the objection.

16 (At the side bar)

17 MR. JOSSEN: First of all, your Honor,
18 this witness is of course in part a hostile witness as
19 far as the government is concerned.

20 Now, I have had some conversation with
21 him yesterday. He indicated to me that he was not
22 surprised at the fact that the money was simply offered
23 to him and that he was suspicious at the time the money
24 was offered to him, that it perhaps had something to do
25 with the fact that Meyers was obsessed with taxes.

1 jpiw

2 Now, I do not know exactly how he will
3 answer this question.

4 THE COURT: I decline to take it and I
5 sustain the objection.

6 (In open court)

7 THE COURT: Objection sustained.

8 MR. JOSSEN: I have no further questions
9 of the witness.

10 THE COURT: Anything else?

11 RECROSS EXAMINATION

12 BY MR. GALLOP:

13 Q Did you ever travel with Mr. Meyers to
14 the Dominican Republic?

15 A What year, sir?

16 Q Well, do you recall ever --

17 THE COURT: Is this recross?

18 MR. GALLOP: Yes.

19 THE COURT: I don't know how it relates
20 to the redirect examination.

21 What year?

22 MR. GALLOP: I don't know, your Honor.

23 THE COURT: Well, if you don't know, I am
24 not going to take the evidence. I am only interested in
25 what he did in '71 and '72.

1 jpjw

2 Q I will ask it that way.

3 Do you ever recall traveling to the Dominican
4 Republic with Mr. Meyers in 1971 and 1972?5 A It would be hard for me to say, sir, because
6 I travel so often because I wouldn't know exactly for
7 sure.

8 MR. GALLOP: No further questions.

9 THE COURT: All right, you can step down.

10 (Witness excused)

11 MR. JOSSEN: The government calls Henry
12 Klaassens.

13

14 H E N R Y K L A A S S E N S , called as

15 a witness by the government, being first duly

16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. JOSSEN:

19 Q Mr. Klaassens, I will ask you to keep your
20 voice up so everyone can hear your testimony.

21 By whom are you employed?

22 A I am employed by the New York Stock Exchange.

23 Q In what capacity?

24 A As controller of the Exchange.

25 Q Tell us what your duties and responsibilities

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1 jpjw Klaassens - direct

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2 are as controller of the Stock Exchange.

3 A Basically I am responsible for about thirty
4 people. Those people are primarily responsible for pre-
5 paring the financial records of the Exchange, preparing
6 the monthly financial statements, quarterly reports.
7 They also pay bills out to various vendors. They send
8 out bills to the membership. They also receive in the
9 funds for the bills that we have sent out as well as
10 pay checks out to the employees.

11 Q Now, are you familiar with the books and
12 records kept by the New York Stock Exchange?

13 A Yes, I am.

14 Q Are you familiar with the rules and
15 regulations of the Stock Exchange?

16 A Yes.

17 Q Are you familiar with the operation of the
18 Exchange itself?

19 A Yes.

20 Q Mr. Klaassens, have you heard the term
21 \$2 broker used?

22 A Yes, I have.

23 Q Would you please tell the Court and jury
24 what that term means?

25 A Basically a \$2 broker is a member of the

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Exchange. The broker acts as a broker's broker. In other words, he is active on the floor of the Exchange and he executes orders for other brokers that are too busy to execute the orders for themselves.

Q Does a \$2 broker have any direct dealings with retail customers?

A No.

THE COURT: What is the origin of that expression, if you know?

THE WITNESS: I'm sorry, I don't know.

Q Are you familiar with the manner in which a \$2 broker gets paid?

A Yes.

Q Would you tell us how a \$2 broker is paid?

A Normally a \$2 broker is paid by the brokerage firm that he is executing the order for.

Q Is he paid directly by that brokerage firm, if you know?

A I'm not certain on that.

Q Now, Mr. Klaassens, would you tell us what requirements exist for a person to hold a seat on the New York Stock Exchange?

THE COURT: Is that relevant here?

MR. JOSSEN: Your Honor, I think it might

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Klaassens - direct

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be.

A I'm not certain I know all of the requirements which are necessary to hold a seat. That is spelled out in the Constitution of the Exchange, exactly what the eligibility requirements are.

Q Are there educational requirements?

A Like I say, I don't believe so, but I can't specifically testify to that fact.

Q Are there experience requirements?

A Yes.

Q Now, are you familiar with the Stock Exchange's requirements with respect to the reporting of commissions earned by members of the Exchange?

A Yes, I am.

Q Would you tell us what requirements for reporting of commissions earned by members of the Exchange was in existence in the years 1971 and 1972?

A Basically in those years there was the report called a Form 600 that the various members were required to file with the Exchange.

This report was required to be filed on a monthly basis, normally the 18th day following the month that the transactions took place.

Q Was there any requirement that the report,

1 jpjw

Klaassens - direct

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2 the Form 600 be signed by the broker?

3 A Yes, the reports were supposed to be signed
4 by the broker or general partner of the firm.

5 Q Would you tell us what the purpose of this
6 reporting requirement was?

7 A Basically, this information was used by
8 the Exchange to bill the member for one percent of the
9 commissions that the member earned on the floor of the
10 Exchange.

11 Q Now, Mr. Klaassens, to your knowledge were
12 there any sanctions available for a deliberately
13 inaccurate Form 600 if one had been filed by a member?

14 A Well, like I say, there is a possibility
15 that disciplinary action could be taken.

16 Q Mr. Klaassens, I show you what we have
17 marked as Government Exhibits 21 and 22 for identification
18 and I ask you to examine those documents.

19 A Yes.

20 Q Would you tell us what Government's Exhibit
21 21 and 22 for identification are?

22 A Basically, they are copies of the Form 600
23 reports which the member was required to submit to the
24 Exchange for the years 1971 and 1972, as well as for
25 December, 1970.

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Klaassens - direct

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2 Q Would you look at each exhibit and tell us
3 the exact period that is covered by the forms in that
4 exhibit?

5 A Well, on Exhibit 21, that covers the forms
6 for the month of December, 1970 through November, 1971.

7 Q And with respect to Government Exhibit 22
8 for identification?

9 A Exhibit 22 covers the period December, 1971
10 through November, 1972.

11 Q Now, Government Exhibits 21 and 22 for
12 identification, are they records which are kept in the
13 regular and ordinary course of business by the Exchange?

14 MR. GALLOP: I have already examined
15 these documents and I have no objection to these being
16 admitted.

17 MR. JOSSEN: I will offer them.

18 THE COURT: Received.

19 (Government Exhibits 21 and 22

20 received in evidence)

21 Q Now, Mr. Klaassens, to your knowledge, was
22 any information contained in the Form 600 reported by
23 the New York Stock Exchange to the Internal Revenue
24 Service?

25 A No.

1 jpjw Klaassens - direct/cross 300

2 Q To your knowledge, was there any require-

3 ment that any of the information reported on the Form 600

4 by the broker be reported to the Internal Revenue Service?

5 A No.

6 Q Now, so that we are clear, are the Form 600

7 records which are kept available to the member for his

8 examination upon request?

9 A Yes, they are.

10 MR. JOSSEN: I have no further questions

11 of the witness.

12 CROSS EXAMINATION

13 BY MR. GALLOP:

14 Q Are any copies of these forms returned to

15 the member?

16 A No, no copies are returned to the member.

17 Q They are kept in your possession; is that

18 correct?

19 A That's correct.

20 MR. GALLOP: No further questions.

21 MR. JOSSEN: Nothing further.

22 THE COURT: You may step down.

23 (Witness excused)

24 MR. JOSSEN: Your Honor, I would like to

25 announce a stipulation to the jury.

